

1 UNITED STATES DISTRICT COURT  
 2 EASTERN DISTRICT OF NORTH CAROLINA  
 3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 5:18-CR-452-FL-1  
 5 Plaintiff, - New Bern, North Carolina  
 6 v. - January 22, 2019  
 7 LEONID ISAAKOVICH TEYF, - Motion Hearing  
 8 Defendant. -  
 9 -----

10 TRANSCRIPT OF MOTION HEARING  
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN  
 12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

14 For the Plaintiffs: United States Attorneys' Office  
 15 By: Jason M. Kellhofer  
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 16 For the Defendant: Moore & Van Allen PLLC  
 17 By: James P. McLoughlin, Jr.  
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22  
 23 Proceedings recorded by mechanical stenography,  
 24 transcript produced by notereading.  
 25

1 (Commenced at 10:01 a.m.)

2 THE COURT: Good morning.

00:00:02 3 MR. KELLHOFER: Good morning, Your Honor.

00:00:04 4 MR. McLOUGHLIN: Good morning.

00:00:04 5 THE COURT: As the first order of business,  
00:00:06 6 would the clerk administer the oath to our interpreter.

00:00:13 7 THE CLERK: Please state your name.

00:00:15 8 THE INTERPRETER: Tatyana Draga.

00:00:18 9 (Whereupon the interpreter was sworn by the  
00:00:25 10 clerk.)

00:00:25 11 THE COURT: For the record, Mr. Kellhofer,  
00:00:29 12 you are here present and representing the Government,  
00:00:32 13 together with Ms. Kocher.

00:00:33 14 MR. KELLHOFER: Yes, Your Honor.

00:00:34 15 THE COURT: And on behalf of the defendant,  
00:00:35 16 sir, would you facilitate introductions.

00:00:38 17 MR. McLOUGHLIN: Yes, Your Honor. Good  
00:00:39 18 morning. I am Jim McLoughlin from Moore & Van Allen  
00:00:43 19 here representing Mr. Teyf. To my right is John Han  
00:00:47 20 from our office. To my left is Nathan White from our  
00:00:51 21 office. And to Mr. White's left is Manvel Vasilyev, who  
00:01:00 22 represents Mr. Teyf.

00:01:02 23 THE COURT: Mr. Teyf is here and present.

00:01:06 24 Well, it's your motion. How would you like  
00:01:08 25 to proceed?

00:01:10 1 MR. McLOUGHLIN: That is exactly the  
00:01:11 2 question, Your Honor, I was about to ask you. Our  
00:01:15 3 position, as you know, is that Mr. Teyf is entitled to a  
00:01:18 4 de novo hearing. We can proceed with our argument with  
00:01:24 5 submission of evidence, or if the Government intends to  
00:01:27 6 call a witness, since it is their burden of proof, the  
00:01:30 7 Government may go first; we could cross-examine and then  
00:01:34 8 respond. I think that is Your Honor's call.

00:01:39 9 THE COURT: What are you prepared to do,  
00:01:41 10 counsel for the Government?

00:01:43 11 MR. KELLHOFER: Your Honor, it's our  
00:01:44 12 understanding that this is the defendant's motion and  
00:01:48 13 that the burden would be on the defendant. We did not  
00:01:51 14 intend to present evidence. This appears to be an  
00:01:56 15 evidentiary hearing called by the defense.

00:01:59 16 There are matters by proffer that we have  
00:02:01 17 raised through motion. And I think at the outset it may  
00:02:04 18 be appropriate at this time to raise our concerns with  
00:02:07 19 regard to who was introduced as Mr. Manvel Vasilyev on  
00:02:14 20 the defense table at the moment.

00:02:17 21 THE COURT: What's your concern?

00:02:19 22 MR. KELLHOFER: Your Honor, we have a few  
00:02:21 23 concerns, and this actually will go towards our -- today  
00:02:25 24 we will be submitting a requested protective order, Your  
00:02:30 25 Honor. I will explain by proffer as to our issues with

00:02:40 1 regard to Mr. Vasilyev.

00:02:44 2 MR. McLOUGHLIN: Your Honor, with respect --  
00:02:45 3 may I interrupt here for a moment and ask a question?

00:02:47 4 THE COURT: Let's understand what the  
00:02:51 5 question is.

00:02:51 6 You can continue.

00:02:53 7 MR. KELLHOFER: Thank you, Your Honor.

00:02:59 8 Mr. Vasilyev has not entered a notice of  
00:03:01 9 appearance, Your Honor, at this point. That falls -- or  
00:03:07 10 I guess exacerbates additional concerns that the  
00:03:10 11 Government has and at this time feels the need to make  
00:03:13 12 you fully aware of. I guess the beginning is the best  
00:03:20 13 place to start for Your Honor.

00:03:23 14 This investigation has been ongoing for a  
00:03:25 15 number of years, Your Honor. Mr. Manvel Vasilyev was  
00:03:33 16 known to the investigation as a friend of Mr. Teyf's;  
00:03:40 17 that had been the characterization.

00:03:41 18 THE COURT: Go through the introductions  
00:03:43 19 again. Who is this person? And tell me your name  
00:03:46 20 again.

00:03:48 21 MR. VASILYEV: Manvel Vasilyev.

00:03:50 22 THE COURT: Are you a lawyer?

00:03:53 23 MR. VASILYEV: I am.

00:03:53 24 THE COURT: Are you admitted to practice?

00:03:57 25 MR. VASILYEV: In New York.

00:03:58 1 THE COURT: So you have filed no notice of  
00:04:00 2 appearance in this case?

00:04:02 3 MR. VASILYEV: I have not.

00:04:03 4 THE COURT: Mr. Han, you haven't either?

00:04:05 5 MR. McLOUGHLIN: Mr. Han is a member of the  
00:04:07 6 New York bar also, Your Honor. He is here just to  
00:04:09 7 assist me this morning. And Mr. Vasilyev is here to  
00:04:12 8 give me advice on immigration law. Mr. Vasilyev is an  
00:04:16 9 immigration lawyer.

00:04:17 10 THE COURT: Okay. And where do you practice  
00:04:19 11 in New York?

00:04:24 12 MR. VASILYEV: My practice is in Charlotte.

00:04:27 13 THE COURT: Where do you practice in  
00:04:29 14 Charlotte?

00:04:30 15 MR. VASILYEV: I have an office.

00:04:32 16 THE COURT: You practice by yourself?

00:04:35 17 MR. VASILYEV: Yes.

00:04:36 18 THE COURT: Okay. And, sir, who are you  
00:04:38 19 again?

00:04:44 20 MR. WHITE: I am Nathan White.

00:04:49 21 THE COURT: And you have filed a notice of  
00:04:50 22 appearance?

00:04:51 23 MR. WHITE: Yes, Your Honor.

00:04:54 24 THE COURT: So we have four lawyers over  
00:04:55 25 there. And what's your concern about the Charlotte

00:04:58 1 lawyer?

00:04:59 2 MR. KELLHOFER: Yes, Your Honor. So Mr.  
00:05:02 3 Vasilyev was known to this investigation as a friend of  
00:05:06 4 the defendant, Mr. Teyf. That's how he had been  
00:05:10 5 characterized by multiple individuals during this case.

00:05:15 6 After the present charges had occurred, and  
00:05:20 7 after Mr. Teyf had been arrested, a number of attorneys,  
00:05:26 8 as is present here from the firm of Moore & Van Allen,  
00:05:31 9 entered -- a notice of appearance was entered. At no  
00:05:34 10 point did Mr. Vasilyev enter an appearance or otherwise  
00:05:38 11 indicate that he was representing Mr. Teyf, the  
00:05:40 12 defendant, in these matters, nor did any member of the  
00:05:45 13 defense team indicate to the Government that Mr.  
00:05:49 14 Vasilyev was a member of the defense team.

00:05:53 15 While in Charlotte on an unrelated matter at  
00:05:58 16 an immigration hearing, HSI Agent Tony Bell saw Mr.  
00:06:03 17 Vasilyev at that location. Agent Bell approached and  
00:06:08 18 questioned whether he would be willing to speak with  
00:06:11 19 Agent Bell about the defendant or whether he considered  
00:06:14 20 himself an attorney for the defendant. Special Agent  
00:06:18 21 Bell indicated at that time that if Mr. Vasilyev was not  
00:06:21 22 going to be speaking with Special Agent Bell, that  
00:06:24 23 Special Agent Bell would be further investigating Mr.  
00:06:27 24 Vasilyev's relationship with Mr. Teyf.

00:06:31 25 Shortly thereafter we were contacted by

00:06:34 1 defense counsel, Mr. McLoughlin, and were questioned  
00:06:40 2 about this event. And there was a concern that Special  
00:06:45 3 Agent Bell was intimidating a member of the defense  
00:06:49 4 counsel.

00:06:51 5 Counsel for the Government were completely  
00:06:53 6 unaware of Mr. Vasilyev's relationship in this regard,  
00:06:57 7 in any regard, and stated as much. In fact, Mr.  
00:07:02 8 Vasilyev uses an independent email, an independent  
00:07:06 9 address, independent phone number, independent  
00:07:10 10 letterhead. He's completely separate and apart.

00:07:13 11 THE COURT: What's your point today?

00:07:14 12 MR. KELLHOFER: Yes, Your Honor. The  
00:07:16 13 investigation into Mr. Vasilyev has uncovered matters  
00:07:21 14 that make him a target of the investigation. That's the  
00:07:26 15 ultimate concern. And I can go on and explain why that  
00:07:29 16 is, Your Honor. But Mr. Vasilyev being utilized in the  
00:07:35 17 manner he's been utilized causes us great concern for a  
00:07:38 18 number of reasons. And if I may continue.

00:07:44 19 THE COURT: Are you seeking -- what  
00:07:46 20 relief --

00:07:46 21 MR. KELLHOFER: We'll be seeking a protective  
00:07:48 22 order that there is no contact with Mr. Vasilyev, Your  
00:07:54 23 Honor -- and I should say between Mr. Teyf and Mr.  
00:07:59 24 Vasilyev.

00:08:01 25 And I can go on to explain in further

00:08:03 1 detail, Your Honor, our concerns and why they've been  
00:08:06 2 raised to us from confidential human sources as to the  
00:08:11 3 paperwork filed by Mr. Vasilyev that is the subject of  
00:08:16 4 this investigation in terms of the immigration counts.

00:08:21 5 Mr. Vasilyev was the individual assisting in  
00:08:24 6 that and fraudulently submitting that paperwork. So  
00:08:30 7 having Mr. Vasilyev continue as an attorney who at a  
00:08:35 8 minimum is a witness to this case is of great concern,  
00:08:41 9 particularly when he is having attorney-client  
00:08:44 10 supposedly privileged continuing contact with the  
00:08:50 11 defendant unmonitored.

00:08:54 12 THE COURT: Okay. Thank you.

00:08:57 13 MR. McLOUGHLIN: Your Honor, I have a couple  
00:08:59 14 of points here. First, the Government has been  
00:09:05 15 investigating Mr. Teyf, we believe, based on their  
00:09:10 16 statements, for approximately four years. The  
00:09:14 17 Government has known for a very long time that Mr.  
00:09:19 18 Vasilyev is counsel, was counsel, immigration counsel  
00:09:25 19 for Mr. Teyf and represented Mr. Teyf in connection with  
00:09:29 20 the immigration matters.

00:09:31 21 When Agent Bell approached Mr. Vasilyev and  
00:09:35 22 threatened him and asked him to -- threatened him if he  
00:09:42 23 would not disclose communications between himself, Mr.  
00:09:45 24 Vasilyev, and Mr. Teyf, Agent Bell was violating every  
00:09:51 25 DOJ protocol with respect to communications with counsel



00:09:55 1 for a defendant or an attorney for a defendant,  
00:09:59 2 forgetting the question of whether he was representing  
00:10:01 3 Mr. Teyf in connection with this specific proceeding.  
00:10:07 4 And we don't know who approved that or did or did not  
00:10:12 5 approve that. The Government indicates at this point  
00:10:15 6 that they didn't approve it. We'll leave that for the  
00:10:21 7 future.

00:10:22 8 When Mr. Bell made this approach to an  
00:10:26 9 attorney for a defendant in violation of DOJ procedures  
00:10:31 10 and guidance, and I would argue the Constitution and  
00:10:35 11 privilege and a list of laws that we don't have time to  
00:10:41 12 list today, I called the Government and very  
00:10:44 13 specifically asked them: If you have an issue, let me  
00:10:49 14 know; if Mr. Vasilyev, you are saying, is a target or a  
00:10:53 15 subject, let me know.

00:10:55 16 Now, they have been investigating Mr. Teyf  
00:10:58 17 and these immigration issues for four years. What I got  
00:11:02 18 from them was: Well, we don't usually comment on that,  
00:11:06 19 but we'll get back to you. That was at least six weeks  
00:11:13 20 ago and more. We don't get a phone call. Mr. Vasilyev  
00:11:19 21 doesn't get a target letter, doesn't get a notice that  
00:11:22 22 he's a subject until we make this motion. And the first  
00:11:26 23 thing the Government does to highjack this motion is to  
00:11:30 24 raise these issues cold to us and to the Court, not  
00:11:34 25 having made a motion, which they are required to do if

00:11:37 1 they're going to seek a protective order, again, not  
00:11:41 2 having sent a target letter, they announced in open  
00:11:45 3 court that an attorney is a target. This is outrageous.

00:11:49 4 And if we look at the alleged fraud which  
00:11:53 5 the Government has made certain allegations, the alleged  
00:11:56 6 fraud is that the application for Mr. Teyf's -- or so  
00:12:01 7 far as it has been conveyed so far in open court is that  
00:12:05 8 Mr. Teyf said that he was going to receive a salary of  
00:12:08 9 \$110,000 from his employer at the time that the  
00:12:15 10 application was made. The Government has made the point  
00:12:18 11 that the records they have seen to date indicate that  
00:12:23 12 the salary was less than that; I want to say it was  
00:12:27 13 \$27,000; and therefore, they claim that there was fraud.

00:12:31 14 Now, there is nothing in the discovery that  
00:12:34 15 we have seen and that they have provided, including the  
00:12:38 16 immigration file that they've provided, in which there's  
00:12:41 17 any allegation or evidence that there was any fraud on  
00:12:44 18 behalf of either Mr. Teyf or Mr. Vasilyev. Nothing.

00:12:49 19 Moreover, what the law states is that that  
00:12:52 20 salary can be paid by the employing company offshore or  
00:12:57 21 onshore. And if he was paid offshore, then those  
00:13:01 22 records wouldn't be available to the government, and  
00:13:03 23 they wouldn't know it.

00:13:04 24 So at this point the Government's claim to  
00:13:06 25 fraud is as tenuous as can be, at least as has been made

00:13:11 1 available to us. And so, Your Honor, our position is if  
00:13:14 2 they want to make a motion, and if they want to raise an  
00:13:17 3 objection, they should file it. We will have the  
00:13:20 4 opportunity to respond, and then we can have a hearing.

00:13:23 5 But it unclear to us what exactly they want  
00:13:26 6 to have happen this morning, other than try to influence  
00:13:30 7 the Court's decision on the detention issue. And so we  
00:13:33 8 object to having any further discussion about this until  
00:13:37 9 they've made a proper motion.

00:13:38 10 THE COURT: Let's do this; let's think about  
00:13:41 11 Rule 44.1, "Appearance of Counsel in a Criminal Case."  
00:13:45 12 "Counsel representing a defendant in a criminal case  
00:13:48 13 shall file a Notice of Appearance with the clerk and  
00:13:53 14 serve the United States Attorney and other counsel with  
00:13:56 15 a copy."

00:13:57 16 So what are you relying on to bring to court  
00:14:00 17 these two gentlemen and seat them next to you and rely  
00:14:04 18 on their advice and counsel but not cause them to file a  
00:14:08 19 notice of appearance?

00:14:09 20 MR. McLOUGHLIN: Well, Your Honor, with  
00:14:10 21 respect to Mr. Vasilyev, since he was and is immigration  
00:14:14 22 counsel for Mr. Teyf, we believe we have the right --  
00:14:19 23 and he can make a motion for appearance; we're happy to  
00:14:25 24 do that. We didn't think it was necessary.

00:14:26 25 THE COURT: We have a rule. So would you

00:14:28 1 reflect on that rule and tell me what permits you to be  
00:14:34 2 joined by these gentlemen and have them seated with you  
00:14:37 3 in this criminal proceeding and rely on their counsel  
00:14:41 4 and advice and not cause them to file a notice of  
00:14:44 5 appearance? Maybe you know one, and I don't.

00:14:48 6 MR. McLOUGHLIN: Well, Your Honor, with  
00:14:49 7 respect to the local rule, I believe the local rule as  
00:14:52 8 interpreted requires that someone who is going to make  
00:14:54 9 an appearance and argue and submit papers and otherwise  
00:14:58 10 communicate with the Court has the obligation to make an  
00:15:01 11 appearance. Mr. Vasilyev is part of our team because he  
00:15:05 12 is immigration counsel to Mr. Teyf and has a great deal  
00:15:10 13 of factual knowledge. Therefore, we think it's  
00:15:12 14 appropriate to have him available. If Your Honor would  
00:15:15 15 like him to sit on the other side of the bar for that  
00:15:17 16 reason until he makes an appearance, we are happy to do  
00:15:20 17 that.

00:15:21 18 And with respect to Mr. Han, we're happy to  
00:15:25 19 do the same thing.

00:15:26 20 THE COURT: I want to know who's noticed an  
00:15:28 21 appearance. I want to hear from those people today.  
00:15:30 22 So, gentlemen, since you have not noticed an appearance  
00:15:33 23 pursuant to our rule, I think you need to just seat  
00:15:38 24 yourself in the gallery. And if you are going to be  
00:15:40 25 appearing, you need to file a notice of appearance.

00:15:43 1 Okay?

00:15:44 2 MR. HAN: Yes, Your Honor.

00:15:45 3 THE COURT: So we'll just focus on what's in  
00:15:47 4 front of me today. And what's in front of me today is  
00:15:49 5 the question of whether or not the Court can fashion a  
00:15:54 6 set of release conditions that's going to insure that  
00:15:57 7 Mr. Teyf shows up and doesn't harm others while this  
00:16:02 8 action is proceeding.

00:16:05 9 So you don't have any witnesses. It is a de  
00:16:12 10 novo hearing. You're relying on matters of record. And  
00:16:15 11 anything else?

00:16:16 12 MR. KELLHOFER: Well, Your Honor, I suppose  
00:16:18 13 first, per our motion, our first would be simply that an  
00:16:25 14 evidentiary hearing, there has been insufficient  
00:16:27 15 evidence to establish the need for --

00:16:29 16 THE COURT: But isn't that for me to decide,  
00:16:32 17 not for you? So do you have any evidence?

00:16:35 18 MR. KELLHOFER: I guess the question for us  
00:16:36 19 then, Your Honor, is whether a decision has been made  
00:16:39 20 that a de novo --

00:16:42 21 THE COURT: Well, I set this matter for  
00:16:44 22 hearing. And when I do, it's de novo.

00:16:46 23 MR. KELLHOFER: Yes, Your Honor. Then in  
00:16:47 24 that instance we would rely on the transcript that was  
00:16:50 25 provided -- or that is available, I apologize, Your

00:16:53 1 Honor.

00:16:53 2 THE COURT: It's available?

00:16:56 3 MR. KELLHOFER: Yes, Your Honor.

00:16:57 4 THE COURT: Remind me where on the docket  
00:16:59 5 that is.

00:17:09 6 MR. KELLHOFER: Yes, Your Honor. That is DE  
00:17:12 7 71.

00:17:20 8 THE COURT: I've read all of your papers,  
00:17:26 9 and there's talk of new evidence on the part of the  
00:17:30 10 defendant.

00:17:32 11 MR. McLOUGHLIN: Yes, Your Honor.

00:17:33 12 THE COURT: How do you plan to proceed?

00:17:35 13 MR. McLOUGHLIN: Your Honor, what we would  
00:17:37 14 like to do is present some exhibits to the Court, and  
00:17:41 15 then we are going to offer a proposed custodian to  
00:17:47 16 testify, and then we will close, Your Honor.

00:17:55 17 THE COURT: Okay. All right.

00:17:59 18 MR. McLOUGHLIN: And since these are  
00:18:02 19 proffers at this point, we will argue the relevancy and  
00:18:06 20 materiality of the exhibits as we put them in.

00:18:09 21 THE COURT: Well, please go forward.

00:18:13 22 MR. McLOUGHLIN: Thank you, Your Honor.

00:18:15 23 Your Honor, the defense's first exhibit --  
00:18:18 24 if I may approach.

00:18:19 25 THE COURT: Yes.

00:18:22 1 MR. McLOUGHLIN: -- is formerly Government's  
00:18:24 2 Exhibit 12. It is now Defense Exhibit 1 for this  
00:18:30 3 hearing.

00:18:41 4 THE COURT: You've handed up triplicate  
00:18:44 5 copies.

04:11:28 6 (Whereupon Defendant's Exhibit 1 is admitted  
04:11:31 7 into evidence.)

00:18:53 8 MR. McLOUGHLIN: Your Honor, the relevancy  
00:18:55 9 of this document is the following: The Government  
00:18:58 10 argues and it's in its brief on this motion at page 16;  
00:19:03 11 and it is, I believe, discussed in the transcript at, I  
00:19:09 12 want to say, around page 38 or 39, that in the last five  
00:19:13 13 years Mr. Teyf has used five different countries of  
00:19:16 14 citizenship to travel; that being Belarus, Israel,  
00:19:21 15 Serbia, Russia, and the United States. And they have  
00:19:26 16 argued that as a result, Mr. Teyf is a risk of flight.

00:19:31 17 Your Honor, that statement with respect to  
00:19:37 18 five countries of citizenship to travel is demonstrably  
00:19:41 19 false, and it is false as demonstrated by Exhibit D-1.  
00:19:44 20 If you would look at Exhibit D-1, it includes a column  
00:19:50 21 of the immigration document number that was used for  
00:19:53 22 travel, the direction of travel, and it lists the  
00:19:58 23 citizenship of or the alleged citizenship that Mr. Teyf  
00:20:04 24 employed when he was travelling. And I will point Your  
00:20:09 25 Honor to the document column on the far right. The

00:20:14 1 documents that are the basis of this exhibit are Mr.  
00:20:19 2 Teyf's alien registration card 210021799, which is his  
00:20:25 3 green card; second, an Israeli passport number 31823387  
00:20:34 4 that will expire in January of 2023; his Russian  
00:20:39 5 passport, last three digits 135; and his now-expired  
00:20:44 6 Israeli passport ending in 981.

00:20:49 7 Your Honor, all of these documents have a  
00:20:55 8 role. And you will note that there is no document that  
00:20:59 9 mentions Serbia, and there is no document that mentions  
00:21:06 10 Belarus. There is, in fact, nothing on this document or  
00:21:11 11 the document on the exhibit or the documents the  
00:21:14 12 Government relies on that there was any claim of  
00:21:17 13 citizenship by Mr. Teyf to Serbia or that he has a  
00:21:24 14 Serbian passport or any other Serbian document. In the  
00:21:27 15 immigration file we have received there is nothing from  
00:21:30 16 Serbia. We think they just made a mistake.

00:21:33 17 More important, however, if you look at the  
00:21:35 18 U.S. references down -- about one-third down the page,  
00:21:40 19 there is the allegation made by the Government that he  
00:21:44 20 argued or used U.S. citizenship to enter the United  
00:21:52 21 States. That claim by dint of this document is false.  
00:21:58 22 First -- and the Government knows the difference between  
00:22:01 23 citizenship and residency. The document they rely upon  
00:22:05 24 for Mr. Teyf claiming U.S. citizenship to enter the  
00:22:08 25 United States is, in fact, his green card. That green



00:22:12 1 card says on its face to anybody who reads it, he's not  
00:22:15 2 a citizen. If you are entering the United States and  
00:22:19 3 you are a foreign national, you have to show your green  
00:22:22 4 card to show your qualification as an entry visa. So if  
00:22:27 5 you are entering the United States as a foreign  
00:22:29 6 national, and you have a green card, you show your  
00:22:32 7 passport, and you show your green card. That is not a  
00:22:36 8 claim of U.S. citizenship. And the allegations in the  
00:22:40 9 brief and in the hearing are incorrect.

00:22:45 10 Moreover, they then add Russia and Belarus.  
00:22:51 11 Again, there is -- of the documents that they cite for  
00:22:55 12 the claim that Mr. Teyf was travelling under Belarus  
00:23:00 13 citizenship, they list his Russian passport. That's not  
00:23:05 14 a Belarus passport; it's a Russian passport. Mr. Teyf  
00:23:10 15 was born in Belarus, and his Russian passport says he  
00:23:14 16 was born in Belarus. But he's a Russian citizen. And  
00:23:18 17 the Government argued in the brief to this Court that he  
00:23:21 18 was a flight risk because he was using Belarus  
00:23:24 19 citizenship to travel. And the very documents that they  
00:23:27 20 rely upon are a Russian passport that has nothing to do  
00:23:30 21 with Belarus.

00:23:35 22 Second, if we move on from the travel  
00:23:39 23 record, we have the argument the Government has made  
00:23:43 24 that Mr. Teyf operates a safe house.

00:23:48 25 Now, we have the deed for that, quote, safe

00:24:04 1 house. It's actually a condo.

04:11:28 2 (Whereupon Defendant's Exhibit 2 is admitted  
04:11:31 3 into evidence.)

04:11:31 4 MR. McLOUGHLIN: Now, Your Honor, you will  
00:24:17 5 recall from the transcript that the Government made a  
00:24:26 6 big deal over the fact that Mr. Teyf knows how to  
00:24:29 7 operate LLCs, so therefore has the ability to hide real  
00:24:37 8 estate and create safe houses.

00:24:39 9 Ironically the Government argued: We don't  
00:24:41 10 know how many safe houses Mr. Teyf might have.

00:24:43 11 Well, if you have a burden of proof, and  
00:24:46 12 your evidence is: I don't know; which is to say: I  
00:24:48 13 don't have any evidence, that's what looks like a  
00:24:52 14 failure of proof.

00:24:53 15 But more importantly, what the Government  
00:24:55 16 didn't tell Judge Numbers and didn't disclose in its  
00:24:59 17 brief is that when Mr. Teyf bought this condo, he bought  
00:25:03 18 it in his own name. Having argued in the hearing that  
00:25:08 19 he bought the New Market property in an LLC, and so he  
00:25:12 20 knows how to hide ownership, they then segued into the  
00:25:15 21 condominium without disclosing to Judge Numbers that he  
00:25:19 22 bought the condominium in his own name. He subsequently  
00:25:22 23 transferred 90 percent ownership to his son but kept ten  
00:25:25 24 percent ownership, and he's on the deed. The point  
00:25:27 25 being here, Your Honor, as the Government argued, that

00:25:32 1 if putting something in an LLC name would show some  
00:25:37 2 intent to create a safe house, then the fact that you  
00:25:41 3 put it in your own name generates or should generate the  
00:25:45 4 opposite assumption, which is you don't care whether  
00:25:48 5 anybody knows you own it.

00:25:49 6 Now, the Government also argues that the  
00:26:02 7 sole purpose of this condo was to be a safe house. And  
00:26:09 8 it's unclear exactly what the Government means by that.  
00:26:14 9 But if one looks at the divorce records, which we are  
00:26:19 10 proffering as Exhibit D-3, what we find in the divorce  
00:26:31 11 records is that the decree of divorce was filed in March  
00:26:38 12 of 2017. The property was acquired in February of 2017.  
00:26:48 13 Now, we then come to the Government's argument that this  
00:26:54 14 is somehow a place to hide or something else. And  
00:26:56 15 instead what we have is a circumstance where a man is in  
00:26:59 16 the middle of a divorce where his wife is going to get  
00:27:03 17 title to their house, and does, needs a place to live.  
00:27:08 18 And so, in his own name, shortly before his divorce, a  
00:27:15 19 month, he buys a condo. This does not give rise to an  
00:27:20 20 inference of improper conduct or flight risk.

04:11:28 21 (Whereupon Defendant's Exhibit 3 is admitted  
04:11:31 22 into evidence.)

00:27:24 23 THE COURT: Well, what was furnishing that  
00:27:27 24 condominium?

00:27:29 25 MR. McLOUGHLIN: Well, that's interesting.

00:27:31 1 That's an interesting point. The first thing is, Your  
00:27:34 2 Honor, if you want to create a safe house where you  
00:27:36 3 could go and hide, you know what the first thing I would  
00:27:38 4 have? I'd have a bed, because I would need a place to  
00:27:41 5 sleep. There was no bed in that condo. The reason  
00:27:45 6 there was no bed in that condo is because, as the  
00:27:48 7 evidence demonstrate, Mr. Teyf and Mrs. Teyf worked out  
00:27:53 8 an arrangement where he could continue to stay at their  
00:27:56 9 large home in Raleigh so he could participate in the  
00:27:58 10 raising of their children, specifically their eight and  
00:28:02 11 now-nine-year-old daughter. So he didn't need to  
00:28:04 12 furnish the condo because he was living on the other  
00:28:07 13 side of Raleigh. Nothing nefarious.

00:28:12 14 Now, the next thing that we hear in that as  
00:28:14 15 well, in addition to it being sparsely furnished --  
00:28:17 16 again, he was living in the other house; he didn't have  
00:28:21 17 to furnish it. Easy enough to get a bed.

00:28:24 18 But we say: Well, there were guns in the  
00:28:27 19 safe. And we note, Your Honor, as the Government  
00:28:32 20 rightly noted, there's no allegation that Mr. Teyf had  
00:28:35 21 those guns illegally or improperly, and they were kept  
00:28:39 22 in a very good gun safe. What the evidence -- what the  
00:28:46 23 commentary from the transcript indicates is common sense  
00:28:51 24 prevailed here. We'll talk about the fact, and the  
00:28:53 25 evidence indicates that Mr. Teyf believed that his wife

00:28:57 1 had a drinking problem, and they had issues. Mr. Teyf  
00:29:03 2 quite rightly in the circumstances in which there is  
00:29:07 3 drinking in the home and there are arguments, decided  
00:29:11 4 that the better place to keep his legally owned guns was  
00:29:16 5 not in that house but to move it to safer place. That  
00:29:21 6 doesn't make it a safe house; that makes him a prudent  
00:29:27 7 father.

00:29:28 8 When we look also at the safe -- at this,  
00:29:32 9 quote, safe house, we also note that the transcript of  
00:29:35 10 November 14, 2018 mentions the transfer to his son  
00:29:42 11 because he wanted his children to be able to live in the  
00:29:45 12 condo. And in the transcript of November 27, '18, he  
00:29:52 13 explains to confidential human source number one that  
00:29:56 14 the apartment is going to be for his children. That is  
00:29:59 15 not a safe house.

00:30:01 16 Now, that all goes, Your Honor, to the  
00:30:05 17 question of a flight risk and a danger. So then, Your  
00:30:11 18 Honor, if we go to the next issue, what we would like to  
00:30:26 19 do is we would like to put forth a custodian, Your  
00:30:42 20 Honor, and examine her. Her name is Roza, R-o-z-a,  
21 Lyubinin, L-y-n-b-i-n-i-n -- excuse me, L-y-u-b-i-n-i-n.  
22 If we can call her, Your Honor.

23 THE COURT: Yes.

24 THE CLERK: Please come forward to be sworn.

25 MR. McLOUGHLIN: You're going to need a

1 translator.

2 THE CLERK: Please place your left hand on  
3 the Bible and raise your right.

4 Please state your name.

00:31:50 5 THE WITNESS: Roza Lyubinin.

00:31:50 6 (Whereupon the witness was sworn by the  
00:32:03 7 clerk.)

00:32:03 8 THE CLERK: Please take the witness stand  
00:32:06 9 and be seated.

00:32:17 10 - - -

00:32:17 11 ROZA LYUBININ, DIRECT EXAMINATION

00:32:22 12 BY MR. McLOUGHLIN:

00:32:22 13 Q. Ma'am, if I ask you a question you don't  
00:32:26 14 understand, please feel free to ask me to repeat it or  
00:32:31 15 clarify it.

00:32:35 16 Ma'am, can you give the Court your name and home  
00:32:39 17 address for the record.

00:32:44 18 A. Roza Lyubinin, 2615 Beckwith Road, Apex.

00:32:57 19 Q. Approximately how long have you lived in the  
00:33:00 20 Raleigh/Wake County area?

00:33:01 21 A. Two years.

00:33:02 22 Q. Where did you live before that?

00:33:04 23 A. In Israel.

00:33:07 24 Q. How many years did you live in Israel?

00:33:11 25 A. Twenty-seven years.

00:33:12 1 Q. Where did you live before living in Israel?

00:33:15 2 A. Russia.

00:33:18 3 Q. Where in Russia?

00:33:20 4 A. I was born in Belarus, then we lived up north.

00:33:30 5 Q. Did you know Mr. Teyf when you were in Russia?

00:33:34 6 A. No.

00:33:36 7 Q. When did you first meet Mr. Teyf?

00:33:43 8 A. In Raleigh in 2016.

00:33:47 9 Q. And did you meet Tatyana Teyf at the same time?

00:33:54 10 A. Yes, at the same time.

00:34:01 11 Q. What was your profession in Israel?

00:34:05 12 A. I was a psychiatrist.

00:34:15 13 Q. Can you tell us briefly why you moved from Israel  
00:34:19 14 to the Raleigh area.

00:34:35 15 A. Our daughter lives in Raleigh for 12 years; our  
00:34:39 16 only daughter has been living there for 12 years with  
00:34:42 17 her children. And we moved here to Raleigh to be with  
00:34:45 18 our family, with our grandkids.

00:34:48 19 Q. And are your grandchildren or at least one of  
00:34:55 20 them about the same age as Mr. Teyf's daughter, C.?

00:35:02 21 A. Yes, both of our grandkids were and are friends  
00:35:13 22 with the daughter of Leonid and Tatyana Teyf, C.

00:35:21 23 Q. Ma'am, have you, through interactions with Mr.  
00:35:24 24 Teyf, had the opportunity to observe him with his  
00:35:27 25 children, including his daughter C.?

00:35:37 1 A. Yes, naturally, of course I did.

00:35:40 2 Q. I'm sorry?

00:35:41 3 A. Yes, naturally, of course I did.

00:35:44 4 Q. Can you give us a brief description of Mr. Teyf's  
00:35:48 5 behavior as a father as you have observed it?

00:35:56 6 A. I think Leonid Teyf is a great father, very  
00:36:09 7 attentive, very caring and loving.

00:36:12 8 MR. McLOUGHLIN: We'd note for the record at  
00:36:14 9 this time when Mr. Teyf was arrested he was on his way  
00:36:17 10 to pick up his daughter C. at school.

00:36:19 11 THE COURT: So noted.

00:36:22 12 BY MR. McLOUGHLIN:

00:36:23 13 Q. Now, in the --

00:36:42 14 MR. McLOUGHLIN: We'll just give the  
00:36:43 15 translator a moment to translate. If you speak too  
00:36:47 16 long, it gets hard for her.

00:36:48 17 A. Not only just school. I've known and talked to  
00:36:50 18 him on the phone and observed him and talked to him when  
00:36:53 19 he would take his daughter not only to school but to  
00:36:55 20 other activities like taekwondo and other extra  
00:36:59 21 curricular activities and just spend time with her.

00:37:07 22 Q. Now, based on your experience is Mr. Teyf known  
00:37:09 23 in the community in Raleigh and has he had family  
00:37:13 24 gatherings where he's invited various families to his  
00:37:17 25 home?



00:37:41 1 A. Yes, of course. And that's how we've been  
00:37:45 2 interacting with him too. We would visit him at his  
00:37:48 3 house. He would visit us at our house, family visits  
00:37:52 4 back and forth, interacting in that way. It was very  
00:37:57 5 important for him that his family was involved.

00:37:59 6 Q. And in entertaining and visits, again, was Mr.  
00:38:06 7 Teyf known in the community and did he invite people in  
00:38:10 8 the community into his home and interact with members of  
00:38:14 9 the community?

00:38:32 10 A. Yes, of course. Friends.

00:38:38 11 Q. Now, ma'am, you have -- is it true that you are  
00:38:44 12 willing to serve as the third-party custodian for Mr.  
00:38:51 13 Teyf?

00:38:58 14 A. Yes.

00:39:03 15 Q. And have you had the opportunity to read the  
00:39:05 16 questionnaire that in this district is available to be  
00:39:12 17 reviewed by third-party custodians and completed?

00:39:23 18 A. Yes, last night.

00:39:27 19 Q. And having reviewed the questionnaire, are you  
00:39:32 20 able to say that you are prepared to fulfill the  
00:39:35 21 responsibilities of a custodian as set forth in the  
00:39:38 22 questionnaire?

00:39:46 23 A. Yes, of course.

00:39:49 24 Q. And do you understand that Mr. Teyf would have to  
00:39:59 25 live with you, and do you have space for him?

00:40:06 1 A. Yes, I made a room ready for him.

00:40:09 2 Q. And who else lives in the home?

00:40:13 3 A. My husband.

00:40:16 4 Q. And is your husband in the courtroom today?

00:40:21 5 A. Yes.

00:40:22 6 Q. Has Mr. Teyf ever stayed with you before?

00:40:40 7 A. We went on vacations together. He's visited our  
00:40:44 8 house many times. He's familiar with it, but he didn't  
00:40:47 9 have a need to stay there. But we went on vacations  
00:40:50 10 together.

00:40:52 11 Q. And is your husband willing to have Mr. Teyf stay  
00:40:55 12 in your home?

00:40:57 13 A. Yes, of course.

00:41:00 14 Q. And are there any firearms in your home, guns?

00:41:06 15 A. No.

00:41:08 16 Q. Is there a land telephone line there in your  
00:41:10 17 home?

00:41:16 18 A. No. I don't know.

00:41:18 19 Q. There is not. Are you prepared to have a land  
00:41:22 20 line installed so that if there is electronic monitoring  
00:41:26 21 of Mr. Teyf that land line can be used?

00:41:40 22 A. Yes. If I need to, yes.

00:41:42 23 Q. Okay. Do you currently work, ma'am?

00:41:48 24 A. No, we are home.

00:41:51 25 Q. And do you have a valid driver's license?

00:41:57 1 A. Yes.

00:41:58 2 Q. And do you have a car?

00:42:01 3 A. Yes.

00:42:04 4 Q. Other than minor traffic violations, have you  
00:42:08 5 been convicted of a crime?

00:42:20 6 A. I've never had any minor or any big violations.

00:42:28 7 Q. Now, you are aware of the charges against Mr.  
00:42:31 8 Teyf; are you not?

00:42:38 9 A. Yes.

00:42:44 10 Q. And approximately what is your date of birth?

00:42:53 11 A. 24, April, 1960.

00:42:58 12 MR. McLOUGHLIN: Your Honor, we'll submit  
00:42:59 13 the Social Security number. For privacy reasons we  
00:43:02 14 won't give that in open court.

00:43:04 15 THE COURT: Certainly.

00:43:05 16 BY MR. McLOUGHLIN:

00:43:06 17 Q. And, ma'am, what -- where are you a citizen?  
00:43:10 18 What country?

00:43:12 19 A. Israel.

00:43:24 20 Q. And, ma'am, do you have a green card? Are you a  
00:43:27 21 permanent resident?

00:43:29 22 A. Yes.

00:43:35 23 Q. And since Mr. Teyf was arrested in this matter,  
00:43:42 24 has he made any incriminating statement to you?

00:43:54 25 A. We haven't had any contact.

00:44:01 1 MR. McLOUGHLIN: No more questions, Your  
00:44:02 2 Honor. At this point we would proffer.

00:44:04 3 THE COURT: Any questions of the witness?

00:44:06 4 MR. KELLHOFER: Yes, Your Honor. Thank you.

00:44:07 5 - - -

00:44:07 6 ROZA LYUBININ, CROSS-EXAMINATION

00:44:08 7 BY MR. KELLHOFER:

00:44:08 8 Q. Good morning, ma'am.

00:44:10 9 A. Good morning.

00:44:11 10 Q. You mentioned that you were aware of the charges  
00:44:14 11 against Mr. Teyf. What are those charges?

00:44:26 12 A. What I know from the media, from the news.

00:44:32 13 Q. Has the defense counsel or another attorney  
00:44:35 14 showed you what the charges against Mr. Teyf were?

00:44:48 15 A. Last night when we were going over the  
00:44:51 16 questionnaire, yes.

00:44:52 17 Q. Okay. And what did you understand the charges to  
00:45:06 18 be?

00:45:06 19 A. Material and family.

00:45:09 20 Q. I'm sorry; I didn't hear that.

00:45:41 21 A. So we view Mr. Teyf as our friend. We look at  
00:45:46 22 him as our friend --

00:45:49 23 Q. I understand.

00:45:50 24 THE COURT: Let her finish.

00:45:50 25 MR. KELLHOFER: I'll let the interpreter go.

00:45:52 1 I apologize.

00:45:52 2 A. Whatever his minor falls or problems he may run  
00:45:56 3 into, we always look at him as a good father and a good  
00:45:59 4 friend, and that's how we view him, and that's how we  
00:46:01 5 relate to him.

00:46:02 6 Q. So do you not know the charges?

00:46:05 7 MR. McLOUGHLIN: Objection.

00:46:08 8 THE COURT: Let her answer the question.

00:46:10 9 A. I know that he is charged with money laundering,  
00:46:13 10 but it has nothing to do with me. I also know he has  
00:46:22 11 family problems with Tatyana, but I don't support that  
00:46:27 12 and don't believe that very much.

00:46:29 13 Q. Okay. Well, do you believe as a third-party  
00:46:34 14 custodian that you should know what he's been charged  
00:46:36 15 with?

00:46:38 16 MR. McLOUGHLIN: Objection. Calls for a  
00:46:39 17 legal conclusion, Your Honor. Move to strike.

00:46:42 18 MR. KELLHOFER: It's cross-examination.

00:46:45 19 THE COURT: Overruled. She can answer the  
00:46:47 20 question.

00:46:51 21 A. I know.

00:46:53 22 Q. Do you know that he's been charged with wanting  
00:46:55 23 to have somebody murdered?

00:47:01 24 A. Yes, I know.

00:47:02 25 Q. And you understand as part of that that he

00:47:05 1 facilitated possession of a firearm?

00:47:18 2 A. I know.

00:47:19 3 Q. Okay. And so you understand that part of your  
00:47:21 4 responsibility would be making sure that nothing like  
00:47:24 5 that is going on?

00:47:32 6 MR. McLOUGHLIN: Again, objection, Your  
00:47:34 7 Honor. Calls for an improper legal conclusion. Her  
00:47:37 8 responsibility is to insure that the conditions of  
00:47:39 9 release are complied with.

00:47:41 10 THE COURT: Overruled. She can answer the  
00:47:43 11 question.

00:47:47 12 THE INTERPRETER: Just a second.

00:48:01 13 A. I know -- I already forgot the question. Can you  
00:48:05 14 repeat the question, please?

00:48:08 15 BY MR. KELLHOFER:

00:48:08 16 Q. I just want to make sure you understand what the  
00:48:10 17 charges were, and there will be restrictions placed on  
00:48:14 18 Mr. Teyf.

00:48:23 19 A. I understand that.

00:48:25 20 Q. Okay. You mentioned that you'd been to Mr.  
00:48:28 21 Teyf's house and that he often had friends over; is that  
00:48:40 22 correct?

00:48:40 23 A. Yes. Yes.

00:48:41 24 Q. Okay. And when you say friends, does that  
00:48:44 25 include people like Mr. John Cotter?

00:48:53 1 A. Yes.

00:48:54 2 Q. You understand Mr. Cotter has been charged as a  
00:48:58 3 co-conspirator in this case?

00:49:08 4 A. Yes.

00:49:09 5 Q. Okay. And so other friends, would that include  
00:49:13 6 Alexei Polyakov?

00:49:17 7 A. Yes.

00:49:18 8 Q. You understand he's been charged as well in this  
00:49:20 9 case?

00:49:22 10 A. Yes.

00:49:24 11 Q. And these are the friends that he'd have over at  
00:49:27 12 his house?

00:49:31 13 A. Yes. And there were others.

00:49:35 14 Q. Okay. Well, his wife was obviously there often  
00:49:42 15 as well, right?

00:49:44 16 A. Well, his wife was always there.

00:49:46 17 Q. Okay. And she's been charged?

00:49:56 18 A. Well, it just so happens that our circle of  
00:49:59 19 friends, everyone got arrested.

00:50:02 20 Q. Like the Timofeevs as well?

00:50:07 21 A. I don't know them.

00:50:08 22 Q. You don't know them? Okay.

00:50:10 23 So your husband lives at the home, correct?

00:50:17 24 A. Yes.

00:50:19 25 Q. I'm sorry, but what is his name?

00:50:21 1 A. Mark.

00:50:26 2 Q. And has your husband entered into or ever been in  
00:50:29 3 any business relationship with Mr. Teyf?

00:50:38 4 A. Yes.

00:50:39 5 Q. In what form?

00:50:41 6 A. Investments. I don't even know how to say it.

00:50:51 7 Q. And those are investments with Mr. Teyf, right?

00:50:59 8 A. And partly with other partners, yes.

00:51:05 9 Q. And those investments are still outstanding,  
00:51:08 10 correct?

00:51:14 11 A. Yes.

00:51:14 12 Q. So you have a financial interest in Mr. Teyf's  
00:51:19 13 case, correct?

00:51:21 14 MR. McLOUGHLIN: Objection, Your Honor.

00:51:22 15 THE COURT: Sustained. She doesn't need to  
00:51:25 16 answer the question.

00:51:31 17 Next question.

00:51:33 18 BY MR. KELLHOFER:

00:51:34 19 Q. You mentioned that you don't work, ma'am; is that  
00:51:45 20 correct?

00:51:45 21 A. I don't need to work. I'm not looking for work.

00:51:48 22 Q. Okay. So you don't work. Do you have other  
00:51:51 23 obligations that take you outside of the house?

00:52:08 24 A. To be with my grandkids, yes, take the kids to  
00:52:12 25 school, pick them up from school. Yes.



00:52:14 1 Q. I'm just trying to get an idea; how often are you  
00:52:17 2 actually at home, or do you have community events that  
00:52:21 3 you're attending that you're often gone? I'm just  
00:52:24 4 trying to ask: Are there things that take you out of  
00:52:28 5 the home everyday or on a sporadic basis?

00:52:43 6 A. I don't have any other obligations. I plan  
00:52:47 7 everything on my own. I don't have any other  
00:52:49 8 obligations.

00:52:50 9 MR. KELLHOFER: Okay. I have no further  
00:52:55 10 questions.

00:52:56 11 Thank you, Your Honor.

00:52:56 12 THE COURT: Any redirect?

00:52:58 13 MR. McLOUGHLIN: No, Your Honor. Thank you.

00:52:59 14 THE COURT: Thank you. You can step down.  
00:53:02 15 Any further evidence on behalf of the  
00:53:04 16 defendant?

00:53:04 17 MR. McLOUGHLIN: Yes, Your Honor. Your  
00:53:18 18 Honor, if I may approach again, we have Exhibit D-4. In  
00:53:23 19 terms of additional custodial issues, the defense has  
00:53:30 20 obtained a proposal from a third-party security firm,  
00:53:38 21 Capital Special Police, under which they would visit the  
00:53:44 22 home at specified times to confirm Mr. Teyf's being  
00:53:52 23 there, which would provide an extra layer of security  
00:54:00 24 with respect to his conduct. This, of course, would be  
00:54:08 25 in addition to the fact that Mr. Teyf is willing to have

00:54:14 1 any reporting conditions to the pretrial services/  
00:54:18 2 probation that the Court might impose. He is also  
00:54:21 3 willing to wear a GPS monitoring device. He is willing  
00:54:28 4 to surrender use of a cell phone and only use the land  
00:54:36 5 line. He is willing to accept any other conditions that  
00:54:41 6 the Court might impose.

04:11:28 7 (Whereupon Defendant's Exhibit 4 is admitted  
04:11:31 8 into evidence.)

00:54:46 9 MR. McLOUGHLIN: With that, Your Honor, I'd  
00:54:47 10 like to talk a little bit more about the issue of  
00:54:52 11 danger, and talk a little bit about the Government's  
00:54:56 12 evidence and facts.

00:55:00 13 The Government makes a great deal of clamor  
00:55:09 14 in its brief about the strength of its case. And it is  
00:55:13 15 one of the errors that the Government led Judge Numbers  
00:55:19 16 to commit that the Government relied in its submission  
00:55:25 17 of evidence in the trial exclusively on the nature of  
00:55:30 18 the charges and the summary of Agent Kinney, who had  
00:55:34 19 absolutely no firsthand knowledge at all of the nature  
00:55:37 20 of the charges, presenting absolutely no evidence that  
00:55:45 21 there were no conditions that the Court could impose  
00:55:48 22 that would insure that Mrs. Teyf and A.G. and the  
00:55:57 23 community would not be subject to danger. There is a  
00:56:00 24 complete absence of evidence by the Government other  
00:56:02 25 than the charges themselves and Agent Kinney's summary.

00:56:08 1 So there's a fundamental failure in the constitutionally  
00:56:11 2 required evidence to be submitted by the Government, and  
00:56:14 3 I think there are very good reasons for that.

00:56:16 4 The Government in its clamor in its brief  
00:56:19 5 says: Our case is strong; our case is strong. And your  
00:56:21 6 argument that our case is strong is just wrong. That  
00:56:26 7 misses the point. The point to be made here is related  
00:56:32 8 directly to the question that the Bail Reform Act  
00:56:35 9 requires, and that is: Are there special conditions  
00:56:38 10 that the Court can impose that would provide a  
00:56:39 11 reasonable assurance, not a guarantee? And the cases  
00:56:45 12 cited by the Government, including Hurtado and others,  
00:56:48 13 say that reasonable -- that certainty is not required.  
00:56:54 14 Are there conditions that to an objective test can  
00:56:59 15 reasonably give the Court some assurance that Mr. Teyf  
00:57:02 16 will not be a danger? And the point that the Government  
00:57:07 17 misses is: This is about Mr. Teyf and his character and  
00:57:13 18 his evidence.

00:57:14 19 And, Your Honor, the Government made the  
00:57:24 20 argument that in February of 2018 Mr. Teyf made the  
00:57:32 21 statement in a reporting to confidential human source  
00:57:39 22 one that he should take every measure necessary to  
00:57:46 23 insure that A.G. was killed. That statement -- and  
00:57:54 24 Exhibit D-5 is a copy of that transcript. And I want to  
00:57:59 25 note for the record, Your Honor, we're putting this in;

00:58:03 1 I assume due to confidentiality the Government is going  
00:58:07 2 to want these to be sealed in some way or held, and  
00:58:12 3 we're happy to have any stipulation with respect to that  
00:58:15 4 so that these transcripts are not going to be public.

04:11:28 5 (Whereupon Defendant's Exhibit 5 is admitted  
04:11:31 6 into evidence.)

00:58:19 7 THE COURT: Does the Government wish to be  
00:58:20 8 heard on that request or that notice?

00:58:24 9 MR. KELLHOFER: We do wish them to be sealed,  
00:58:27 10 Your Honor.

00:58:27 11 THE COURT: You dropped off there.

00:58:29 12 MR. KELLHOFER: Yes, we do wish them to be  
00:58:32 13 sealed, Your Honor.

00:58:32 14 THE COURT: You wish what's been handed to  
00:58:34 15 me as D-5 to be sealed in its entirety?

00:58:37 16 MR. KELLHOFER: Yes, Your Honor.

00:58:37 17 THE COURT: And the reason for that?

00:58:39 18 MR. KELLHOFER: Well, first of all, I will  
00:58:42 19 note for Your Honor as well it is a draft that was  
00:58:45 20 provided. Secondarily, I've not reviewed this  
00:58:52 21 specifically for the request today, but I believe it  
00:58:55 22 does go towards both items regarding the FBI's process  
00:59:10 23 and this source's information.

00:59:27 24 THE COURT: Well, based on that showing, I  
00:59:30 25 will take into the record D-5 under seal. We may need

00:59:37 1 to return to that. I can recognize the Government  
00:59:39 2 hasn't had a chance to fully reflect on the 21 pages.  
00:59:46 3 But if it needs to remain under seal -- I'll put it  
00:59:49 4 provisionally under seal for 14 days. If it needs to  
00:59:52 5 remain under seal, before expiration of that time period  
00:59:55 6 file your appropriate motion.

00:59:57 7 MR. KELLHOFER: Thank you, Your Honor. I  
00:59:58 8 appreciate that. I imagine that with regard to any of  
01:00:01 9 the additional, we'd request the same.

01:00:04 10 THE COURT: Do have you additional --

01:00:07 11 MR. McLOUGHLIN: We do, Your Honor.

01:00:08 12 THE COURT: Would you come forward and  
01:00:09 13 provide all the transcripts you want to rely on now.

01:00:12 14 MR. McLOUGHLIN: Yes, Your Honor.

01:00:15 15 Here is what is marked as D-6, which is a  
01:00:20 16 transcript of a conversation that was held the next day;  
01:00:23 17 February, I believe, 8.

04:11:28 18 (Whereupon Defendant's Exhibit 6 is admitted  
04:11:31 19 into evidence.)

01:00:26 20 THE COURT: All right. The Court's ruling  
01:00:28 21 extends to D-6. It will remain under seal for 14 days.  
01:00:32 22 If upon further review the Government believes it's  
01:00:34 23 necessary that the transcripts remain permanently  
01:00:38 24 sealed, make the appropriate motion. Otherwise, if no  
01:00:41 25 motion is made beyond the 14-day period, the Court will

01:00:44 1 unseal on its own initiative both D-5 and D-6. Any  
01:00:49 2 questions from either side?

01:00:51 3 MR. KELLHOFER: No questions, Your Honor.

01:01:03 4 MR. McLOUGHLIN: Your Honor, we also have  
01:01:17 5 D-6.

01:01:18 6 THE COURT: I have D 6.

01:01:21 7 MR. McLOUGHLIN: So two points with respect  
01:01:25 8 to those transcripts, Your Honor. The first is when  
01:01:27 9 one reads them, the statement attributed to Mr. Teyf  
01:01:31 10 does not happen. The second thing is that if one goes  
01:01:37 11 to the end of the second transcript, D-6, and reads  
01:01:42 12 through the last several pages, what one sees is a  
01:01:45 13 discussion about a gun that is related to planting that  
01:01:53 14 gun in some way on A.G. so that he might be deported.  
01:02:03 15 Point being if in the second day of these February  
01:02:07 16 discussions Mr. Teyf's talking about planting a gun with  
01:02:14 17 respect to A.G. so that he might be deported, and in  
01:02:19 18 fact makes no mention of having him killed in that  
01:02:26 19 regard, the Government is exaggerating.

01:02:30 20 And if you look at the Government's brief,  
01:02:34 21 there is another good example of it. And that is, if  
01:02:39 22 you look at the Government's brief, the Government  
01:02:42 23 quotes the discussion between confidential human source  
01:02:46 24 number one and Mr. Teyf talking about a violin, which  
01:02:52 25 they argue is reference to a gun. And what is relevant

01:02:55 1 in that section that they quote, and relevant in a  
01:02:59 2 variety of the transcripts, is that it is confidential  
01:03:03 3 human source number one who says, "We may have to have a  
01:03:08 4 concert here." It is not Mr. Teyf pounding the table  
01:03:14 5 and saying: I want you to do this; I want you to do  
01:03:16 6 this; I want you to do this. It is the confidential  
01:03:19 7 human source who says: Wait a minute. We may need to  
01:03:22 8 have a concert here, and I may need a violin. Why is  
01:03:26 9 that relevant and material? It's because if Your Honor  
01:03:28 10 is making a judgment about this man's danger to the  
01:03:31 11 community and whether you can impose controls and  
01:03:33 12 systems that would allow him to be on pretrial release,  
01:03:37 13 it is relevant: Is he the primary instigator? Is he  
01:03:42 14 obsessive about this? Is he driving this? Or are the  
01:03:48 15 two government informants, who he doesn't know are  
01:03:50 16 informants, helping to drive this because they have  
01:03:52 17 another motive?

01:03:53 18 Now, that is not merely an issue for trial.  
01:03:56 19 We'll talk about it at trial, and some other things, of  
01:04:00 20 course. But in terms of the assessment of the  
01:04:02 21 dangerousness of Mr. Teyf, it is relevant to his mindset  
01:04:07 22 and whether he is a danger now as opposed to then. And  
01:04:15 23 yes, there are all kinds of colorful quotes that can be  
01:04:18 24 pulled out the transcripts, and they reflect anger and  
01:04:21 25 hurt and a variety of other things. That is not the

01:04:25 1 material question before the Court. The Court's -- the  
01:04:28 2 question now is: What conditions can be imposed?

01:04:49 3 And I want to submit, Your Honor, Exhibit  
01:04:52 4 D-7. D-7 is a copy of a police report. And there have  
01:05:02 5 been allegations made in the Government's papers and in  
01:05:05 6 the transcript about domestic violence. Now, we -- in  
01:05:11 7 the transcript or in the Government's case, in their  
01:05:13 8 brief, they make reference to confidential human sources  
01:05:17 9 three and four, and make references to domestic  
01:05:21 10 violence, three and four, confidential human sources.  
01:05:26 11 We have asked the Government to identify those  
01:05:29 12 confidential human sources for us, and the Government  
01:05:31 13 has refused. They made that refusal last night. We  
01:05:35 14 would submit to Your Honor where the Government is  
01:05:38 15 unwilling to provide not only a copy of any statements  
01:05:42 16 so that we might judge the strength of it or the  
01:05:45 17 reliability of it, but is unwilling to even identify the  
01:05:48 18 source, Your Honor should not consider it.

04:11:28 19 (Whereupon Defendant's Exhibit 7 is admitted  
04:11:31 20 into evidence.)

01:05:51 21 MR. McLOUGHLIN: What's relevant to this  
01:05:52 22 police report, which the Government had at the hearing  
01:05:56 23 but didn't use, is that the record establishes that  
01:06:01 24 there was no reported incident of domestic violence  
01:06:08 25 between Mr. and Mrs. Teyf ever. The one instance is



01:06:14 1 this one. And when the police arrived, her complaint  
01:06:17 2 was:

01:06:19 3 "My husband and I are getting a divorce.  
01:06:21 4 This is my house. I allow him to stay. He says mean  
01:06:25 5 things to me, and I want to get a restraining order  
01:06:27 6 against him. I just want peace, and I want to be left  
01:06:32 7 alone. Can you help me? Can you give me a restraining  
01:06:36 8 order right now?"

01:06:37 9 So you have a circumstance in March 18 of  
01:06:40 10 2018 in which Mrs. Teyf is agitated enough to call the  
01:06:43 11 police and seek a restraining order right then, and the  
01:06:48 12 basis on which she's -- she could have said anything,  
01:06:51 13 says, "He's mean to me. He says mean things to me."

01:06:57 14 Your Honor, there is a next exhibit, Exhibit  
01:07:09 15 D-9, which is another police report, which I believe the  
01:07:20 16 Government had in its possession. And this is a police  
01:07:28 17 report of an incident involving Tatyana Teyf.

04:11:28 18 (Whereupon Defendant's Exhibit 9 is admitted  
04:11:31 19 into evidence.)

01:07:36 20 MR. McLOUGHLIN: Now, I want to go back,  
01:07:47 21 Your Honor, for one moment to the offense -- the  
01:07:49 22 incident report of March 18. The response of Mr. Teyf  
01:07:55 23 to his wife's statements is, "My wife drinks a lot. I  
01:08:02 24 don't do anything to her. We're still married. I pay  
01:08:05 25 for everything. The house, the cars; they're all mine."

01:08:08 1 And the report goes on, "Their son told me his mother  
01:08:17 2 and father are married and live together in separate  
01:08:19 3 rooms. He said to me his mom drinks a lot, and that  
01:08:23 4 causes a problem."

01:08:26 5 Now, on that issue and related issues, in  
01:08:33 6 November of 2017, police were called to what appears to  
01:08:38 7 be A.G.'s address, and they observed Tatyana Teyf was  
01:08:49 8 kicking the door. And the officers talked with her,  
01:08:57 9 told her to calm down, and said she appeared to be  
01:09:06 10 intoxicated; the officer could smell alcohol, and he  
01:09:10 11 said she was crying and had a cut on her upper lip. He  
01:09:14 12 asked her how she injured her lip. Notably she said:  
01:09:17 13 A.G.'s door. And she wouldn't tell him, but she only  
01:09:20 14 stated: There's a bad person, and there's marijuana  
01:09:24 15 inside. "And she kept repeating to me she wanted  
01:09:28 16 justice from that bad person." She then called and  
01:09:33 17 had -- called her daughter; her daughter was going to  
01:09:37 18 come pick her up. While that was going on, she walked  
01:09:40 19 away from the officer and started kicking the front door  
01:09:42 20 again, so he arrested her.

01:09:44 21 The point being, Your Honor, that if there's  
01:09:48 22 an issue here about allegations of domestic violence or  
01:09:54 23 other issues, the police reports indicate that the  
01:10:01 24 problem is not with Mr. Teyf, and assuredly there can be  
01:10:09 25 an order of separation by the Court not to contact or be

01:10:14 1 near Mrs. Teyf that would address that issue.

01:10:17 2 In response to this, I have to note, Your  
01:10:20 3 Honor, and address the evidence. We saw the Government  
01:10:29 4 pull articles from four news sources as compelling and  
01:10:35 5 reliable as Jezebel.com, which was terrific to read  
01:10:43 6 because while we were pulling down the evidence that the  
01:10:45 7 Government made reference to, we were able to read how  
01:10:48 8 the Staten Island wives of the reality show and the mob  
01:10:55 9 wives of the reality show were talking about gender  
01:10:58 10 issues, I am the mob. A wonderful source, very  
01:11:03 11 reliable, as is the New York Post, which they also cite.

01:11:10 12 The Government's citation there is a roaring  
01:11:14 13 admission of how weak their case is. Because the fact  
01:11:18 14 of the matter is, if the best you can do about Mr. Teyf  
01:11:21 15 not being subject to a condition that would protect Mrs.  
01:11:25 16 Teyf or A.G. is to cite a teenager who was out on bail  
01:11:31 17 who said he was going to commit suicide, and another  
01:11:36 18 circumstance in which a husband who again attempted  
01:11:41 19 suicide and had been arrested twice before for choking  
01:11:46 20 his girlfriend and threatening her, all of whom are  
01:11:52 21 under the age of 40, and so it happens that there's  
01:11:58 22 domestic abuse while you are on pretrial release, if  
01:12:04 23 that's the best you've got for why a 58-year-old man  
01:12:10 24 with medical issues who is a sophisticated businessman  
01:12:13 25 is not going to understand that he cannot go near A.G.

01:12:16 1 or his wife, then you lose, if the standard is clear and  
01:12:19 2 convincing evidence, or if it's preponderance of the  
01:12:21 3 evidence, or if it's common sense.

01:12:23 4 Now, if we also look at the additional  
01:12:26 5 evidence here, Your Honor, we have Mr. Teyf's medical  
01:12:30 6 records. And Mr. Teyf's medical records establish, and  
01:12:38 7 we have -- they're in Russian, but we have translations  
01:12:45 8 attached. And these records were relied upon in part by  
01:12:56 9 the pretrial services folks, who, quite rightly,  
01:13:02 10 recommended his release. Now, these records indicate  
01:13:08 11 that Mr. Teyf has a variety of medical issues that,  
01:13:14 12 quite frankly, are going to be severely exacerbated by  
01:13:17 13 his incarceration, but also limit the issue of danger  
01:13:24 14 and risk because the first thing to note here is there  
01:13:30 15 is no allegation that Mr. Teyf even engaged in any  
01:13:37 16 personal violence of any kind.

04:11:28 17 (Whereupon Defendant's Exhibit 10 is  
04:11:30 18 admitted into evidence.)

01:13:41 19 THE COURT: Can I ask you to explain to me  
01:13:44 20 more particularly what D-10 is that you've just handed  
01:13:49 21 me?

01:13:51 22 MR. McLOUGHLIN: D-10 are our letters and  
01:13:54 23 medical records from Mr. Teyf's Russian physician  
01:13:57 24 translated into English along with some additional test  
01:14:00 25 records. They show --

01:14:03 1 THE COURT: And I would imagine you would  
01:14:04 2 like the Court to seal this medical information?

01:14:08 3 MR. McLOUGHLIN: We are going to get there,  
01:14:09 4 Your Honor. Yes, please.

01:14:10 5 THE COURT: Any opposition?

01:14:11 6 MR. KELLHOFER: No, Your Honor.

01:14:12 7 THE COURT: All right. Let it be so sealed.

01:14:16 8 MR. McLOUGHLIN: Mr. Teyf has diabetes; he  
01:14:19 9 has an irregular heartbeat; he has chronic gastritis  
01:14:23 10 from a hiatal hernia; he has a variety of other  
01:14:28 11 ailments, including injuries from an accident that left  
01:14:34 12 him with significant muscular and bone issues that  
01:14:39 13 require him to do certain kinds of exercises or he  
01:14:42 14 suffers pain and is unable to sleep.

01:14:49 15 The point of this, Your Honor, again, is  
01:14:54 16 with respect both to flight risk and danger to the  
01:14:58 17 community. Mr. Teyf is not a robust 25-year-old or  
01:15:04 18 35-year-old who is going to be making some arduous  
01:15:08 19 escape or some physical attack on anybody. And there  
01:15:13 20 is, for purposes of the assessment, if you look, for  
01:15:17 21 example, in the recidivism rates that guide the U.S.  
01:15:20 22 Sentencing Guidelines, there is a dramatic difference in  
01:15:24 23 recidivism between people who are over the age of 40 and  
01:15:28 24 people who are under the age of 40. And here that is  
01:15:32 25 relevant to Your Honor because what Mr. Teyf understands

01:15:36 1 and Your Honor can impose is that if Mr. Teyf engages in  
01:15:39 2 any misconduct with respect to A.G. or Tatyana Teyf, he  
01:15:45 3 is looking at severe criminal prosecution consequences;  
01:15:52 4 he is looking at the loss of his relationship with his  
01:15:56 5 children, and you have heard he is a good and devoted  
01:16:00 6 father; he is looking at the loss of all of the  
01:16:03 7 financial security he has built for himself and his  
01:16:07 8 children. Your Honor can also make it remarkably  
01:16:13 9 difficult to practically engage in any misconduct by  
01:16:16 10 conditions of reporting, house arrest, and a variety of  
01:16:22 11 other limitations that are quite easily enforced and  
01:16:25 12 monitored.

01:16:26 13 Now, Your Honor, if we look at the  
01:16:33 14 information here, we also see a number of other issues  
01:16:45 15 in terms of the Government's evidence.

01:16:59 16 The issues in the transcripts again  
01:17:01 17 demonstrate that Mr. Teyf is not usually the instigator.  
01:17:07 18 The transcripts from the February encounter and the  
01:17:16 19 March encounters also indicate that Mr. Teyf is pushed  
01:17:21 20 by confidential human source one in a variety of ways.

01:17:27 21 And so the question you have here is: What  
01:17:35 22 other relevant evidence does Your Honor have with  
01:17:39 23 respect to Mr. Teyf? The first is he has no criminal  
01:17:44 24 record. He has community contacts. And it is also  
01:17:54 25 relevant that the Government has his Russian and Israeli

01:18:01 1 passports. Under Russian statutory procedure and  
01:18:04 2 Israeli statutory procedure one cannot get a new  
01:18:08 3 passport unless one personally appears at the embassy.  
01:18:15 4 Your Honor will not be shocked to know that the Russian  
01:18:17 5 embassy is not in Raleigh/Durham, nor is the Israeli  
01:18:21 6 embassy. Point being that if he is on GPS monitoring  
01:18:27 7 and under controls, he can't get a new passport. And a  
01:18:34 8 58-year-old man with a variety of health issues, there's  
01:18:39 9 one way out, and that's an airplane, and he can't go  
01:18:41 10 without a passport.

01:18:42 11 And the arguments the Government made about  
01:18:44 12 his travelling under different citizenships are simply  
01:18:47 13 incorrect, and that information given to Judge Numbers  
01:18:50 14 was false.

01:18:51 15 So where that becomes relevant with respect  
01:18:54 16 to the danger, Your Honor, is that Mr. Teyf knows that  
01:19:00 17 if there is a problem, and he is unable to leave the  
01:19:05 18 United States, which he is, then the probability that he  
01:19:09 19 is going to have an issue there is very, very  
01:19:11 20 significant.

01:19:13 21 And so when asked the question: What is the  
01:19:16 22 record, and what is the record of anything in which Mr.  
01:19:19 23 Teyf ignored a court order or ignored the order of this  
01:19:24 24 Court? And the answer is, of course, there isn't one,  
01:19:26 25 and he doesn't have a record.

01:19:28 1           So then the question becomes: What is it,  
01:19:31 2   other than the offense itself, that indicates that he  
01:19:34 3   would not be subject to reasonable conditions that would  
01:19:40 4   provide reasonable certainty? And we cited a number of  
01:19:44 5   cases. Here again Judge Numbers erred because Judge  
01:19:47 6   Numbers said: Well, I found two cases, and in both of  
01:19:49 7   those cases they were murder-for-hire cases, and the  
01:19:52 8   Government succeeded in persuading the Court that the  
01:19:55 9   individual should not be released. And so it just  
01:20:01 10   happens that these cases are such that there's danger.

01:20:04 11           The Senate report on the Bail Reform Act is  
01:20:09 12   very, very clear. And in Salerno Judge Rehnquist is  
01:20:14 13   very, very clear. The number of cases in which there  
01:20:18 14   will be no set of circumstances under which someone can  
01:20:22 15   be released because of danger to the community is very,  
01:20:26 16   very, very small. And, in fact, if you read Judge  
01:20:33 17   Rehnquist's intent in Salerno, and if you fairly read  
01:20:36 18   the Senate report on that issue, which says it is,  
01:20:40 19   again, a very, very select few, they are identified with  
01:20:45 20   respect to crimes of violence, repeat offenders, repeat  
01:20:48 21   offenders under drug charges. And there's no dispute  
01:20:51 22   that Mr. Teyf doesn't fit within any of those  
01:20:53 23   categories.

01:20:55 24           And so in Barnett, and in Eischeid, and in  
01:20:58 25   other case, people who are charged with murder for hire,



01:21:01 1 which has a really great name for the newspapers, but is  
01:21:05 2 really not much more than conspiracy, people who are  
01:21:13 3 charged with conspiracy to do bad things get released  
01:21:16 4 every day with no issue.

01:21:20 5 Now, with respect to Mr. Teyf and the  
01:21:26 6 constitutional and statutory tests here, the cases say  
01:21:32 7 that he is entitled to that release. We have three  
01:21:35 8 cases in which a release occurs in a conspiracy to  
01:21:39 9 commit murder, and worse, and those cases where there is  
01:21:44 10 no release generally can be characterized as gang and  
01:21:49 11 drug cases, or mafia cases, none of which is the issue  
01:21:57 12 here.

01:21:57 13 So, Your Honor, when you look at the cases  
01:21:59 14 that we've cited, and you look at the testimony, one  
01:22:07 15 sees a very different picture than Agent Kinney painted  
01:22:13 16 in the materials.

01:22:14 17 And with that, Your Honor, I will sit down  
01:22:15 18 and await a reply from Your Honor.

01:22:22 19 THE INTERPRETER: May the interpreter have a  
01:22:24 20 break?

01:22:25 21 THE COURT: How much time do you need? Ten  
01:22:28 22 minutes? Yes. We'll just simply be at ease for ten  
01:22:33 23 minutes.

01:24:08 24 (Recess taken.)

01:27:56 25 THE COURT: I want to thank you for your

01:27:58 1 service and indicate typically we would have two  
01:28:00 2 interpreters, but Russian interpreters are very  
01:28:04 3 difficult to find. You travelled from Charlotte to be  
01:28:07 4 here?

01:28:07 5 THE INTERPRETER: Yes, Your Honor.

01:28:10 6 THE COURT: We're going to make it a point  
01:28:12 7 with respect to further matters in this case to do our  
01:28:15 8 best to find two of you.

01:28:17 9 THE INTERPRETER: Thank you, Your Honor.

01:28:20 10 So having heard from the defendant more  
01:28:22 11 fully, what says the Government? Again, the issue is  
01:28:26 12 not the defendant's guilt or innocence; the issue today  
01:28:30 13 is whether the Court can fashion a set of release  
01:28:33 14 conditions that's going to assure that Mr. Teyf shows up  
01:28:38 15 and that in the interim he harms no one. So I invite  
01:28:42 16 the Government to be heard.

01:28:45 17 MR. KELLHOFER: Yes, Your Honor. And we  
01:28:47 18 thank you for that.

01:28:48 19 We feel very strongly that that is the exact  
01:28:51 20 point for this hearing. And I think it was a telling  
01:28:56 21 Freudian slip by counsel to say at the "trial" that we  
01:29:00 22 previously had. It's not a trial. And so I'm not going  
01:29:04 23 to get into a nuance of every single exhibit, Your  
01:29:13 24 Honor, and go point by point because this is not trial,  
01:29:17 25 and it is a different standard.

01:29:19 1 With that understanding the Government would  
01:29:20 2 turn back, Your Honor. We have not brought additional  
01:29:23 3 witnesses because all of these matters were presented to  
01:29:26 4 the magistrate judge. We do turn to the transcript. We  
01:29:31 5 would note that within there --

01:29:33 6 THE COURT: Well, let's talk about the fact  
01:29:34 7 that it appears you made a mistake if you did tell the  
01:29:38 8 magistrate judge that he had access to five separate  
01:29:41 9 passports.

01:29:42 10 MR. KELLHOFER: No, Your Honor. Actually I  
01:29:44 11 would say that at page 30 of the transcript the AUSA  
01:29:48 12 explicitly noted that that column was with regard to  
01:29:52 13 citizenship and was not the documents that defense  
01:29:57 14 counsel have claimed that we've done. So no, I would  
01:30:00 15 say that in any case --

01:30:02 16 THE COURT: You've got to just notch it down  
01:30:06 17 a little.

01:30:07 18 I'd like to go back and talk about Mr. Han  
01:30:10 19 and Mr. Vasilyev.

01:30:14 20 Again, reasonably when you sit next to  
01:30:18 21 someone in the well of a courtroom at a hearing, you are  
01:30:22 22 representing you are making an appearance. And we have  
01:30:26 23 a rule, as I've explained, that compels the attorney to  
01:30:30 24 provide more information about him or her in the form of  
01:30:33 25 a written notice of appearance, and which was not done.

01:30:37 1 Certainly if you want to consult with these people, I  
01:30:42 2 understand their areas of expertise lie largely outside  
01:30:46 3 the scope of this hearing, certainly it is the  
01:30:50 4 defendant's right to have other people, other attorneys  
01:30:56 5 work for him.

01:30:57 6 I don't have anything in front of me that  
01:31:01 7 gives me cause to decide today that one of these  
01:31:06 8 attorneys should no longer have any contact with your  
01:31:08 9 client. Okay. I'm not making that ruling by pushing  
01:31:12 10 them back into the gallery. An offensive lob at the  
01:31:20 11 start of the detention hearing that the Court should  
01:31:22 12 focus its attention on that previously unraised issue  
01:31:25 13 and enter a protective order based on an anticipated  
01:31:29 14 future prospect of some form of motion as I understood  
01:31:35 15 it is not well taken with the Court. If there is an  
01:31:38 16 issue to be decided concerning the scope of a protective  
01:31:41 17 order, file your motion, and I'll take it up.

01:31:44 18 MR. KELLHOFER: Understood, Your Honor.

01:31:45 19 THE COURT: But I think the way the hearing  
01:31:46 20 started, again, I want to just keep it focused on what's  
01:31:50 21 at issue here.

01:31:55 22 All right. Your point is taken. You're  
01:31:56 23 saying if I look at that transcript on page 30, I'm  
01:32:00 24 going to see something different than what defense  
01:32:03 25 counsel represents?

01:32:04 1 MR. KELLHOFER: Yes, Your Honor.

01:32:05 2 THE COURT: All right. Does that affect  
01:32:08 3 you? Does that affect your argument?

01:32:10 4 MR. McLOUGHLIN: No, Your Honor. I disagree  
01:32:13 5 with the statement that we said something different or  
01:32:15 6 that it's going to say something different than what we  
01:32:18 7 said. I quoted directly from their brief in which they  
01:32:21 8 say he had access to five citizenships. I never used  
01:32:25 9 the word "passport." I said "citizenship," and that  
01:32:28 10 statement is false. The Government's statement in its  
01:32:32 11 brief and the statements in the transcript about  
01:32:34 12 citizenship are false.

01:32:36 13 THE COURT: All right. Well, what your  
01:32:37 14 exhibit does show to me -- and I'm going to tell you  
01:32:40 15 all, I'm focused on risk of flight.

01:32:47 16 And what you have shown me, evidenced  
01:32:51 17 however he could do it, demonstrated mobility. He can  
01:32:55 18 cross borders. He can go places. And also access to  
01:33:01 19 significant sums of money that relate back to the nature  
01:33:06 20 and circumstances of the instant offense and fly  
01:33:10 21 directly in the face of what has been reported to the  
01:33:14 22 probation office as his annual salary to, for example,  
01:33:20 23 buy a condominium on Glenwood Avenue. So I'm focused on  
01:33:29 24 the fact that somebody with access to this amount of  
01:33:33 25 money, as is alleged, and as appears significant, can

01:33:41 1 find a way to get out of this country or secrete  
01:33:47 2 himself.

01:33:47 3 And it's in the record that he has a  
01:33:50 4 demonstrated lack of respect for authority insofar as in  
01:33:54 5 both this country allegedly and in Russia. He has  
01:34:01 6 attempted to bribe persons in the Government. So that  
01:34:07 7 is something that is factoring into my concern that it's  
01:34:10 8 going to be very difficult for the Court to fashion a  
01:34:13 9 set of release conditions that's going to assure that  
01:34:16 10 Mr. Teyf show up.

01:34:19 11 Also in light of the significant sentence  
01:34:21 12 that he faces. The weight of the evidence under the  
01:34:26 13 case law is one of the least considered factors. But  
01:34:30 14 the nature and circumstances of this offense and the  
01:34:33 15 evidence as has been presented, again, give the Court  
01:34:37 16 this cause to be very concerned about that.

01:34:42 17 I'm not comforted greatly by a private firm  
01:34:49 18 that can be contracted to knock on somebody's door. I  
01:34:54 19 don't think that that enhances my ability to fashion a  
01:35:01 20 set of conditions that's going to assure he will show  
01:35:05 21 up.

01:35:05 22 And I'm not persuaded by his medical  
01:35:08 23 condition. In fact, people in far, far worse physical  
01:35:14 24 health than your client have defied this Court's order  
01:35:19 25 and fled. So he certainly has some issues associated

01:35:25 1 with age and other matters, but it certainly didn't slow  
01:35:30 2 him down with respect to the allegations in this case,  
01:35:35 3 I'm sure the Government would say, and it's not going to  
01:35:40 4 slow somebody down who's determined to avoid the  
01:35:45 5 prosecution of this case.

01:35:47 6 So let's have you be seated, counsel for the  
01:35:50 7 defendant. And having kind of focused Mr. Kellhofer,  
01:35:55 8 I'd like to hear you a little bit more, and then I'll  
01:36:00 9 turn back to the defendant. He will want to address  
01:36:05 10 what I have said here, and he has a right so to do.

01:36:07 11 MR. KELLHOFER: Understood, Your Honor. And  
01:36:08 12 I would note with regard to the points Your Honor has  
01:36:12 13 made, access to funds and the individual's conduct, the  
01:36:19 14 exhibits provided by the defense, I believe D-7 and  
01:36:24 15 D-3 -- D-3 is the Judgment for Absolute Divorce, Your  
01:36:30 16 Honor.

01:36:30 17 THE COURT: I've reviewed that already.

01:36:32 18 MR. KELLHOFER: And at page 5 it talks that  
01:36:35 19 the husband and wife are the owners of real property  
01:36:39 20 located at 6510 New Market, that it will be -- husband  
01:36:45 21 shall execute a general warranty deed conveying any and  
01:36:48 22 all interest to the wife within one month.

01:36:51 23 Now, I'll note, Your Honor, that this is  
01:36:54 24 February, 2017. The D-7, I believe, police report is  
01:37:03 25 now back to reality. This is what will be said at any

01:37:06 1 point. And this was a financial interest action done to  
01:37:09 2 hide funds, from the Government's point of view,  
01:37:12 3 ultimately. And that's a matter for trial. But the  
01:37:15 4 point here is in the police report the statement taken  
01:37:19 5 from Mr. Teyf, "My wife drinks a lot." That's the point  
01:37:23 6 made. And then he goes on to say, "I don't do anything  
01:37:27 7 to her. We are still married. I pay for everything.  
01:37:30 8 The house, the cars; they're all mine." That is so --  
01:37:38 9 the reality of a domestic situation is summed up there,  
01:37:44 10 and an individual who will claim "It's mine" a year  
01:37:49 11 later. That speaks to his assets, what he really in  
01:37:55 12 reality has, and it speaks to the issue that the  
01:38:00 13 Government is charged with with regard to the murder  
01:38:05 14 charges.

01:38:05 15 But specifically with regard to flight risk,  
01:38:10 16 Your Honor, the point made, we can go back and forth  
01:38:16 17 whether "safe house" is the right term for an apartment  
01:38:18 18 with a safe in it or not. The point, Your Honor; he has  
01:38:22 19 funds; he can access other locations; he does that.  
01:38:27 20 That's the point. That's what it comes down to. In his  
01:38:30 21 name; not in his name. At the end of the day, what the  
01:38:33 22 Government believes most pertinent is simply that this  
01:38:36 23 is his capability.

01:38:40 24 Travel. If there was misspoken as to  
01:38:46 25 whether or not it included Belarus and Serbia, the



01:38:50 1 point, Your Honor, multiple avenues of travel. That's  
01:38:54 2 the point. And at trial might be the nitpicking, and I  
01:38:57 3 understand that. But our point would be an immense  
01:39:01 4 ability to travel, a desire to do everything.

01:39:03 5 And at the end of the day Mr. Teyf's threat  
01:39:06 6 is not Mr. Teyf's feeble hand, as the defense would have  
01:39:10 7 you believe. It's that phone call. That's where this  
01:39:13 8 individual is a true danger. He has other people commit  
01:39:20 9 criminal actions, and access to other people to do so,  
01:39:23 10 as alleged and described in the testimony of the agent.

01:39:27 11 The agent got up there and provided  
01:39:29 12 testimony under oath as to the facts, Your Honor. It's  
01:39:35 13 our position that looking at each one of these only  
01:39:39 14 further buttresses what Special Agent Kinney testified  
01:39:43 15 to: that the individual, Mr. Teyf, is here in the  
01:39:48 16 country; he's here by means of a work visa that is not  
01:39:53 17 accurate; he, while here, has utilized funds that were  
01:40:01 18 illegally obtained overseas; that he and his wife have a  
01:40:08 19 problem; that his wife has apparently slept with  
01:40:12 20 somebody else; and that he wanted that person killed.

01:40:15 21 Your Honor, he wanted that person killed by  
01:40:18 22 getting him deported. It's apparent in the statements  
01:40:23 23 provided. We're not going to go through every  
01:40:25 24 recording, and we're certainly not going to play Russian  
01:40:28 25 recordings at this point. But that's what the agent

01:40:31 1 had. That's what the agent reviewed, and that's what he  
01:40:35 2 testified to.

01:40:37 3 The CHS's involvement. Absolutely had a  
01:40:40 4 number of conversations, as is always the case. And as  
01:40:44 5 is often the case, the defense will say: Well, the CHS  
01:40:49 6 prodded him, or whatnot. We can take that up happily at  
01:40:52 7 trial. What I can say is there was always a concern  
01:40:57 8 here in this case from the investigation that Mr. Teyf  
01:41:02 9 would act without the CHS's involvement and, with  
01:41:11 10 effort, get this individual overseas by multiple  
01:41:15 11 avenues.

01:41:18 12 He remains a flight risk. He is facing a  
01:41:22 13 very -- multiple very serious charges. And he has the  
01:41:29 14 means and all of the incentive to do so. And he was  
01:41:34 15 already one foot out of this country, Your Honor. On  
01:41:38 16 December 15 he was intending to leave. According to the  
01:41:43 17 testimony of Special Agent Kinney and as supported  
01:41:46 18 throughout the transcripts, he made it known, especially  
01:41:51 19 when there was a discussion of whether or not the murder  
01:41:54 20 should only be A.G., should it be A.G. and his wife as  
01:41:57 21 well? And his comment was: Well, then I'll definitely  
01:42:01 22 have to leave if that is the case. The whole point is,  
01:42:05 23 obviously, if anyone's sniffing around. And, as was  
01:42:09 24 testified to by Special Agent Kinney, if they came  
01:42:11 25 sniffing around, blame it on the wife, because

01:42:13 1 ultimately he plans to take care of her. And he's been  
01:42:20 2 transferring funds to his son's name so that he wouldn't  
01:42:24 3 have to return. He was already halfway out the door,  
01:42:29 4 Your Honor.

01:42:30 5 THE COURT: Okay. Thank you. Did you wish  
01:42:32 6 to be heard?

01:42:34 7 MR. McLOUGHLIN: I do, Your Honor. A couple  
01:42:36 8 of points. The statute, as you know, says that hearsay  
01:42:43 9 is admissible in connection with a detention hearing.  
01:42:46 10 However, what the cases also say is that the Court  
01:42:48 11 should evaluate the quality of evidence. And the best  
01:42:55 12 way to evaluate the quality of evidence is to take that  
01:42:58 13 evidence and put it up against the template of the  
01:43:00 14 Federal Rules of Evidence, and how reliable it is, and  
01:43:04 15 how substantial it is. And in this case, of course, the  
01:43:06 16 only evidence from the Government is an agent who has  
01:43:11 17 never been involved in anything in connection with this  
01:43:14 18 case, who they propped up like a straw man to keep any  
01:43:21 19 real challenge to the substantial allegations he put  
01:43:25 20 forward. And what's noteworthy about all of that is  
01:43:31 21 first when the Government talks about other people that  
01:43:35 22 Mr. Teyf allegedly hired to do bad things, they're -- at  
01:43:42 23 the time they were allegedly hired to do that, they're  
01:43:45 24 all Government informants in the making. So the point  
01:43:49 25 here is: Chicken or egg, Your Honor, on this one. And

01:43:54 1 that goes to the danger issue that the Government  
01:43:58 2 continues to play up.

01:43:59 3 But I want to make two comments on the issue  
01:44:01 4 of funds illegally obtained overseas and Your Honor's  
01:44:05 5 comment about bribery. The point being, if one reviews  
01:44:10 6 the transcripts -- and we can submit them after the  
01:44:14 7 hearing -- of May 9 and May 23, 2018, in which there is  
01:44:21 8 a meeting with the DHS agent involved, at no point is  
01:44:27 9 Mr. Teyf told that this is a DHS agent. In fact, he had  
01:44:33 10 been told he was a lawyer. And when the DHS agent makes  
01:44:37 11 comments, and you look at the translation that Mr.  
01:44:41 12 Cotter gives, he at no time tells Mr. Teyf that he is a  
01:44:45 13 special agent of the DHS. There is a really very  
01:44:48 14 significant issue here with respect to the bribery of a  
01:44:52 15 DHS agent because Mr. Teyf thought he had a lawyer. And  
01:44:56 16 if you study those two transcripts, he's not identified.

01:44:59 17 With respect to the allegations of  
01:45:01 18 misconduct in Russia, there are two points pertinent to  
01:45:04 19 the Government's arguments, and they go to Your Honor's  
01:45:07 20 concern about disrespect for the law. The first is  
01:45:11 21 there is absolutely no evidence that is presented that  
01:45:15 22 Mr. Teyf violated a law in Russia. In fact, when Judge  
01:45:21 23 Numbers asked the Government to identify the Russian  
01:45:24 24 statute that he had violated, the Government said: We  
01:45:28 25 can't. They don't know. Because he didn't violate one.

01:45:34 1 But more importantly, the allegation of the kickbacks is  
01:45:38 2 supported by a single individual. So far as we can tell  
01:45:43 3 from discovery, no documentary evidence at all. That  
01:45:47 4 individual had a longtime cooperation with the  
01:45:50 5 government, and had an interest to misrepresent. And  
01:45:53 6 that individual never worked for the company, Voentorg,  
01:46:00 7 that the Government says is the participant in this  
01:46:02 8 scheme. And the Government has presented absolutely no  
01:46:09 9 evidence in connection with the seizure orders or  
01:46:12 10 otherwise that connects a single dollar from this  
01:46:16 11 alleged activity in Russia to a dollar in the United  
01:46:20 12 States. The best they can do is say: Well, money came  
01:46:23 13 into the United States from places that we don't like,  
01:46:26 14 and so it must be that same money.

01:46:31 15 But the real issue comes back to, Your  
01:46:33 16 Honor, the issue of whether there are conditions that  
01:46:35 17 give -- create a reasonable assurance, not a guarantee.  
01:46:39 18 A statutory test, the Salerno test, the test in the  
01:46:45 19 Fourth Circuit, is not guarantee. Reasonable objective  
01:46:48 20 assurance that Mr. Teyf will appear when required. And  
01:46:53 21 the undisputed facts are he only has two passports,  
01:46:58 22 Russia and Israel. They've been taken away. He can't  
01:47:03 23 get another one. So he can't travel without a passport.  
01:47:10 24 He is willing to have GPS monitoring, which means the  
01:47:13 25 Government will know within minutes or hours if he

01:47:17 1 starts to leave the jurisdiction. He has a custodian  
01:47:25 2 who has every reason to report any violation.

01:47:29 3 While Your Honor says this is a private  
01:47:32 4 company, it is a reputable security company that is  
01:47:36 5 prepared to just, again, identify where he is.

01:47:40 6 And so the question Your Honor then comes to  
01:47:48 7 is if Your Honor's view about his wealth or the fact  
01:47:56 8 that he been charged or shows a lack of respect for the  
01:47:59 9 law is sufficient to establish that a prisoner is a  
01:48:02 10 flight risk, then everyone with a big enough bank  
01:48:05 11 account and a passport that's been seized by the  
01:48:09 12 government should, in fact, be held pending trial. And  
01:48:16 13 that is clearly not what the case law permits.

01:48:19 14 THE COURT: Well, your client is a citizen  
01:48:26 15 of another country. He has demonstrated ability to  
01:48:36 16 maneuver efficiently, effectively, and often between  
01:48:42 17 borders. The lack of a passport is not, though  
01:48:48 18 certainly is a consideration, is not a determinative  
01:48:52 19 factor. It is possible to secrete yourself without  
01:48:59 20 resort to a passport. The fact of the electronic  
01:49:05 21 monitoring in this case does not compel the conclusion  
01:49:12 22 that together, with all of the other tools you've  
01:49:16 23 suggested to me, that I can fashion a set of release  
01:49:19 24 conditions that will assure that this particular  
01:49:22 25 defendant will show up at all future court dates. So --

01:49:32 1 MR. McLOUGHLIN: A couple of observations if  
01:49:34 2 I may, Your Honor.

01:49:34 3 THE COURT: It's really unnecessary. I've  
01:49:36 4 made my decision. And I'm respectful of your advocacy.  
01:49:41 5 It is for another day that the Court will preside over a  
01:49:46 6 trial.

01:49:48 7 If there are issues concerning access to  
01:49:50 8 what he needs access to in the prison while he's  
01:49:54 9 awaiting trial, you can bring it to my attention. There  
01:49:57 10 may be some things the Court can do to facilitate the  
01:50:03 11 more -- the quality of the representation taking into  
01:50:11 12 consideration there is this language issue. What it is  
01:50:15 13 exactly, I don't know at this point in time. But if,  
01:50:19 14 for example, having a device that he can use to  
01:50:23 15 translate terms -- how are you all working through that?

01:50:29 16 MR. McLOUGHLIN: Well, that has been very  
01:50:30 17 difficult, Your Honor. Originally Mr. Teyf was in Wake  
01:50:36 18 County. And there are translation sources available in  
01:50:40 19 Wake County. The jail is large enough that they have  
01:50:43 20 facilities and sophistication. And so that made life a  
01:50:46 21 lot easier. Both in Edgecombe County and Pitt County we  
01:50:50 22 don't have those translation services readily available  
01:50:54 23 because they're a much smaller jail; they don't really  
01:50:57 24 have capabilities to handle this kind of circumstance.  
01:51:03 25 Their rules, particularly in Pitt County, make it very

01:51:07 1 difficult.

01:51:08 2 THE COURT: Where has he been held lately?

01:51:10 3 MR. McLOUGHLIN: Right now he's in Pitt.

01:51:12 4 THE COURT: How long has he been there?

01:51:14 5 Marshal, do we have a contract that allows  
01:51:17 6 him to be at Wake County pending trial?

01:51:22 7 THE MARSHAL: We do, Your Honor. They will  
01:51:24 8 not transport anywhere outside of Raleigh.

01:51:26 9 THE COURT: But we could put him back there?

01:51:29 10 THE MARSHAL: It's a possibility. Yes,  
01:51:31 11 ma'am.

01:51:31 12 THE COURT: So is that something you would  
01:51:32 13 like the Court to pursue?

01:51:34 14 MR. McLOUGHLIN: Very much so, Your Honor.

01:51:35 15 THE COURT: Okay. Well, I'm going to, in  
01:51:37 16 light of the circumstances of this case, ask the  
01:51:40 17 Marshals to attempt to relocate him to Wake County where  
01:51:46 18 he has access to more of these facilities. If there's  
01:51:50 19 something else, you can let me know.

01:51:53 20 MR. McLOUGHLIN: Thank you, Your Honor.

01:51:54 21 THE COURT: I'll revisit that if need be.

01:52:09 22 So we've got a schedule in place that  
01:52:11 23 requires that pretrial motions be filed by April 10.  
01:52:15 24 And that's on your request for --

01:52:23 25 (Cellular telephone rings in court.)



01:52:23 1 Ms. Kocher, why don't you go outside with  
01:52:25 2 your pocketbook.

01:52:30 3 Does that meet your needs, both sides?

01:52:33 4 MR. McLOUGHLIN: We believe, Your Honor,  
01:52:34 5 Tarboro is another option. We can communicate with the  
01:52:38 6 Marshal's Service about that. That's close enough.  
01:52:41 7 We'll try to figure out the translation resource,  
01:52:45 8 medical issues, and the access.

01:52:47 9 THE COURT: I've sent a computer into --  
01:52:51 10 what's the one up north? We've got the computer going  
01:52:55 11 up there.

01:52:59 12 THE MARSHAL: Albemarle.

01:53:00 13 MR. McLOUGHLIN: I spent a lot of time in  
01:53:03 14 Albemarle. There's not a lot there. We tried the  
01:53:05 15 computer in Edgecombe County. There's a computer there;  
01:53:08 16 it really hasn't worked very well. The band width is  
01:53:12 17 simply too narrow. We've had some issues.

01:53:15 18 THE COURT: You've got access to the  
01:53:17 19 internet in the Edgecombe County Jail?

01:53:20 20 MR. McLOUGHLIN: They have a counsel link,  
01:53:22 21 video conferencing.

01:53:23 22 THE COURT: I see. You're talking not about  
01:53:26 23 your client's ability to translate for himself the  
01:53:32 24 documents that you might wish him to review. You're  
01:53:35 25 talking about the ability to do a teleconference?

01:53:38 1 MR. McLOUGHLIN: All of the above. It's the  
01:53:41 2 whole package, Your Honor.

01:53:43 3 THE COURT: Just talk to the Marshal's  
01:53:44 4 Service. If I need to get involved, you can make the  
01:53:47 5 appropriate motion.

01:53:47 6 MR. McLOUGHLIN: Thank you, Your Honor.

01:53:48 7 THE COURT: So how long is this case going  
01:53:53 8 to take to try?

01:53:58 9 MR. KELLHOFER: I'd say two to three weeks,  
01:54:01 10 Your Honor.

01:54:01 11 THE COURT: That long?

01:54:02 12 MR. KELLHOFER: And part of that, Your Honor,  
01:54:04 13 is this is a language case, as is apparent. So I  
01:54:09 14 imagine the number of witnesses and audio will be in a  
01:54:13 15 foreign language and require that --

01:54:14 16 THE COURT: We're going to have to work hard  
01:54:16 17 to find the number of translators.

01:54:18 18 MR. KELLHOFER: Understood, Your Honor.

01:54:19 19 Your Honor, real quick, for what it's worth.  
01:54:21 20 I believe there may be, insofar as the Marshals look to  
01:54:28 21 move people around, I believe one of the other witnesses  
01:54:31 22 is -- or one of the other co-defendants is presently at  
01:54:34 23 Wake County as well. So I think that may have been sort  
01:54:38 24 of an issue. I'm certain they'll figure it out. I'm  
01:54:42 25 just making you aware.

01:54:43 1 THE COURT: You have been in a case with me  
01:54:45 2 where we had multiple defendants at the Wake County  
01:54:48 3 jail, each with a computer for a short period of time.

01:54:51 4 MR. KELLHOFER: Yes, Your Honor.

01:54:52 5 THE COURT: So I think we can work things  
01:54:54 6 like that out.

01:54:54 7 MR. KELLHOFER: Absolutely.

01:54:57 8 THE COURT: All right. So I'm just telling  
01:54:59 9 you that I have a trial the whole month of July. It's a  
01:55:06 10 five-week trial. So let's look ahead. Have you all  
01:55:16 11 talked about a time to try this case?

01:55:19 12 MR. KELLHOFER: We have not talked about  
01:55:20 13 trial time, Your Honor.

01:55:22 14 THE COURT: All right. Obviously the law  
01:55:27 15 militates toward all defendants being tried in the same  
01:55:30 16 trial absent certain circumstances that can be brought  
01:55:34 17 to my attention in a motion. Where are we? Is  
01:55:40 18 everybody going to be arraigned by April based on your  
01:55:44 19 understanding?

01:55:48 20 MR. KELLHOFER: I believe so, Your Honor. We  
01:55:50 21 have one outstanding for arraignment, and I believe that  
01:55:53 22 will be resolved certainly by then. We had a complaint,  
01:56:01 23 Your Honor, and had requested a 30-day continuance for  
01:56:05 24 the indictment at that time on Mr. John Cotter.

01:56:10 25 THE COURT: He'll be separately indicted if

01:56:12 1 he's indicted? I'm talking about the co-defendants in  
01:56:17 2 this indictment.

01:56:18 3 MR. KELLHOFER: Yes, Your Honor. He -- that  
01:56:21 4 remains to be seen, Your Honor.

01:56:23 5 THE COURT: Any scheduling issues in  
01:56:45 6 September?

01:56:45 7 MR. KELLHOFER: No issue with September.

01:56:47 8 MR. McLOUGHLIN: Not for the defense.

01:56:51 9 THE COURT: Do you want to set September 3,  
01:56:53 10 the day after Labor Day?

01:56:55 11 MR. McLOUGHLIN: It makes it really hard to  
01:56:57 12 set up and get ready. Maybe the 4th or the 5th.

01:57:00 13 THE COURT: That's a good point. I'll tell  
01:57:03 14 you what; why don't we start the 9th.

01:57:06 15 But is your client willing to waive his  
01:57:08 16 Speedy Trial rights?

01:57:10 17 MR. McLOUGHLIN: I have to talk with him,  
01:57:11 18 Your Honor. I can't answer that right now.

01:57:14 19 THE COURT: Do you want to talk to him right  
01:57:16 20 now? You've got a translator right there.

01:57:18 21 MR. McLOUGHLIN: I know, Your Honor, I do.

01:57:20 22 THE COURT: Why don't you have a seat and  
01:57:22 23 talk to him.

01:57:22 24 MR. McLOUGHLIN: I will do that, Your Honor.

01:57:42 25 (Discussion had off the record between the

01:57:46 1 Defendant and defense counsel.)

01:58:27 2 THE COURT: I've put people in jail for  
01:58:29 3 bringing cell phones into the Court.

01:58:32 4 MS. KOCHER: Your Honor, I apologize. And I  
01:58:36 5 am aware of that.

01:58:37 6 At the appropriate time the acting U.S.  
01:58:41 7 Marshal would like to be heard on the issue of placement  
01:58:44 8 of the defendant. It appears that there are issues with  
01:58:47 9 Wake County. So if the Court might -- I don't mean  
01:58:52 10 to -- I'll wait so he's not trying to listen and speak.

01:59:25 11 THE COURT: Actually, I haven't put anyone  
01:59:27 12 in jail; I've just imprisoned the phone.

01:59:34 13 MS. KOCHER: I believe that was a child of  
01:59:36 14 mine, Your Honor, and that might be a good thing.

02:00:08 15 (Discussion continues off the record between  
02:00:10 16 the Defendant and defense counsel.)

02:00:10 17 MR. McLOUGHLIN: Your Honor, as cooperative  
02:00:12 18 as I would like to be, that is not a question I can  
02:00:14 19 answer at this point.

02:00:15 20 THE COURT: Well, the benefits would  
02:00:17 21 obviously accrue to the defendant as well to have a  
02:00:20 22 trial date certain and allow plans to go forward and  
02:00:27 23 schedules to be secured. Understanding, and that's  
02:00:32 24 certainly a question that you can't answer today, I'll  
02:00:34 25 anticipate that he's not willing to waive his Speedy

02:00:37 1 Trial rights, and they'll be defined as the case  
02:00:41 2 proceeds. I think arraignment is not until May.

02:00:45 3 The clerk reminds me that arraignment in  
02:00:47 4 this case is scheduled for May 14.

02:00:51 5 Pursuant to my scheduling order, if you look  
02:00:53 6 carefully at that order, and I'm sure you will, you'll  
02:00:56 7 see that there's a trigger in there, in that order, for  
02:01:00 8 signaling to the Court whether or not the defendant  
02:01:03 9 waives his or her Speedy Trial rights. If you don't  
02:01:06 10 file your proposed jury instructions, for example, by  
02:01:12 11 the arraignment term, it's assumed that -- you'll see in  
02:01:20 12 the order it's understood that the defendant is not  
02:01:23 13 waiving his speedy trial rights. And then when I'm  
02:01:26 14 noticed that there's a not guilty plea, I routinely  
02:01:30 15 engage the parties in a telephone scheduling conference.  
02:01:33 16 And at that scheduling conference, which typically takes  
02:01:36 17 place just a couple of days after the arraignment, I  
02:01:39 18 will set a trial date certain. That's --

02:01:42 19 MR. McLOUGHLIN: What I would propose, Your  
02:01:44 20 Honor, to the Court, and I will discuss this with the  
02:01:48 21 Government, is that we could have a scheduling  
02:01:50 22 conference including dealing with the issue of an  
02:01:52 23 arraignment, possible waiver of arraignment in the next  
02:01:55 24 week or two and address these issues.

02:02:01 25 I will be quite frank with the Court that

02:02:03 1 the issue I have right now is that Mr. Teyf believes he  
02:02:09 2 will not survive in jail. He is willing to, as he said,  
02:02:15 3 sit in that home in handcuffs to deal with this. He  
02:02:22 4 wants his good name back.

02:02:24 5 THE COURT: I can appreciate that. Why does  
02:02:26 6 he think he's not going to survive?

02:02:29 7 MR. McLOUGHLIN: I think, Your Honor, there  
02:02:31 8 are a couple of things. One, for his health. Number  
02:02:36 9 two, the stress of being in prison. Your Honor should  
02:02:39 10 not underestimate the stress of being a 58-year-old man  
02:02:43 11 who for the last two weeks has been in solitary  
02:02:45 12 confinement under the Pitt County rules because he's a  
02:02:48 13 transfer, or more, a 58-year-old man who does not speak  
02:02:53 14 English and only speaks Russian being in a county jail  
02:02:56 15 or pod with a large number of 20-somethings with whom he  
02:03:00 16 cannot communicate and of whom he is afraid. Together  
02:03:05 17 with the food that is served, which is, shall we say,  
02:03:09 18 not -- which is dangerous for someone who is a diabetic.  
02:03:15 19 And the inability to communicate with virtually anyone  
02:03:19 20 where the restrictions, for example, in Pitt County are  
02:03:22 21 that you can have visits on Sundays. He had his son  
02:03:27 22 there. By the time they got the -- have a visitor on  
02:03:31 23 Sunday. By the time they got all the logistics done,  
02:03:34 24 they literally gave them a minute and a half with each  
02:03:37 25 person, or two minutes. So the stress for Mr. Teyf with

02:03:42 1 respect to this issue is one that, at this point, that  
02:03:48 2 is what I have to deal with as his counsel, and what  
02:03:53 3 we're managing.

02:03:54 4 And we would ask the Court in light of his  
02:03:57 5 statement with respect to that, and without waiver of  
02:04:03 6 his rights -- we may submit an affidavit; I don't want  
02:04:11 7 to waive his Fifth Amendment rights, we're probably  
02:04:16 8 going to ask the Court to reconsider on the flight  
02:04:19 9 issue.

02:04:19 10 THE COURT: I think --

02:04:21 11 MR. McLOUGHLIN: But we'll have a scheduling  
02:04:23 12 discussion --

02:04:23 13 THE COURT: I think you should take that to  
02:04:25 14 the Fourth Circuit. I think that would probably be the  
02:04:28 15 best use of your time and talents.

02:04:31 16 Let's --

02:04:32 17 MR. McLOUGHLIN: We'll talk to the  
02:04:33 18 Government this week and then get back -- and talk to  
02:04:37 19 our client and get back to the Court promptly.

02:04:41 20 THE COURT: I can help you on that. Just a  
02:04:44 21 minute.

02:05:16 22 I'm changing your motions deadline. I'm  
02:05:21 23 amending of my own initiative the Court's order entered  
02:05:26 24 January 9, 2019. I'm ordering now that pretrial motions  
02:05:32 25 be filed no later than March 11, and any response no



02:05:51 1 later than March 18.

02:05:57 2 MR. McLOUGHLIN: Your Honor, forgive my  
02:05:59 3 failure of recollection. What was the prior motions  
02:06:02 4 deadline?

02:06:03 5 THE COURT: April 10.

02:06:05 6 MR. McLOUGHLIN: The issue I have, Your  
02:06:06 7 Honor, with March 11 is that I am travelling out of the  
02:06:11 8 country on business most of next week, the week of  
02:06:15 9 February 22, and the week of -- and the following week.

02:06:20 10 THE COURT: You have very able counsel  
02:06:22 11 around you, don't you?

02:06:23 12 MR. McLOUGHLIN: I do, Your Honor. But I'm  
02:06:28 13 the lead counsel.

02:06:29 14 THE COURT: Right. And I continued this  
02:06:30 15 hearing due to your schedule once, didn't I?

02:06:32 16 MR. McLOUGHLIN: You did, Your Honor. And I  
02:06:34 17 very much appreciate the courtesy. Thank you.

02:06:37 18 THE COURT: All right. So March 11 is the  
02:06:41 19 deadline for filing any motion. March 18 is the  
02:06:48 20 deadline for filing any response. And, counsel, before  
02:06:55 21 I put that fully in stone, I'm telling you that I'm  
02:07:00 22 going to set this case for arraignment in front of me on  
02:07:12 23 March 25. And if the plea is not guilty, we will start  
02:07:22 24 this case on April 8. And we will have trial Monday  
02:07:30 25 through Thursday of that week, Monday through Thursday

02:07:34 1 of the following week, and if necessary Monday through  
02:07:38 2 Thursday, based on the estimate of the length of trial  
02:07:42 3 time, which we can revisit.

02:07:45 4 Do you have any compelling conflict the  
02:07:48 5 weeks of April 8, 15, and 22?

02:07:51 6 I do this also in light of your comments  
02:07:54 7 about your client's concerns about the effect that the  
02:07:58 8 jail is having on him and seek to accommodate him by  
02:08:03 9 expediting the trial of this case.

02:08:11 10 MR. McLOUGHLIN: No, Your Honor, I do not  
02:08:12 11 have conflicts.

02:08:13 12 THE COURT: Good. All right. So I'll enter  
02:08:19 13 a short written order after this hearing just  
02:08:22 14 memorializing this and setting a deadline also of March  
02:08:39 15 27 for the filing of any instructions and voir dire.

02:08:45 16 Now, Government, you don't have any  
02:08:48 17 compelling scheduling conflict those three weeks either?

02:08:51 18 MR. KELLHOFER: No, Your Honor. We'll make  
02:08:52 19 it happen.

02:08:52 20 THE COURT: I'm going to do some moving  
02:08:54 21 around because I do have some court conflicts, but this  
02:08:57 22 case, being the fact that it's a criminal case, will  
02:08:59 23 take priority over the Court's civil matters.

02:09:02 24 Is there anything else from the defendant?

02:09:04 25 MR. McLOUGHLIN: Yes, Your Honor. I just

02:09:06 1 want to note for Your Honor's reference that the  
02:09:13 2 concern -- one of the concerns here is the ability to  
02:09:15 3 get documents from abroad. And so while I appreciate  
02:09:19 4 Your Honor's concern about the Speedy Trial Act and the  
02:09:22 5 fact that I am not in a position at this point to waive  
02:09:28 6 Mr. Teyf's rights --

02:09:29 7 THE COURT: That is certainly his right.  
02:09:31 8 And I believe my setting reasonably anticipates the  
02:09:35 9 Speedy Trial time. If it doesn't, I'll reflect on that,  
02:09:38 10 and convene you by conference call at some point.

02:09:43 11 MR. McLOUGHLIN: And if we have some foreign  
02:09:46 12 issue with the respect to the availability of evidence,  
02:09:50 13 we'll be back before Your Honor.

02:09:52 14 THE COURT: Certainly. And if the other  
02:09:53 15 side consents to the relief that you're requesting, you  
02:09:57 16 can imagine that if I find it reasonable, I too would so  
02:10:00 17 agree. But it's certainly in everyone's best interest  
02:10:03 18 to get this case to the jury as soon as possible. And  
02:10:07 19 I'm confident that you're working to accomplish that  
02:10:11 20 goal and will do whatever you can do on that end as  
02:10:15 21 well.

02:10:16 22 Is there anything else if we took it up  
02:10:18 23 right now might help you in your planning?

02:10:22 24 MS. KOCHER: Only in regard to the Marshal,  
02:10:24 25 Your Honor.

02:10:24 1 THE COURT: Marshal Petit, did you wish to  
02:10:27 2 be heard?

02:10:29 3 MARSHAL PETTIT: Yes, Your Honor. As far as  
02:10:30 4 the Wake County issue goes, we do have a contract with  
02:10:33 5 Wake County, but we keep minimal prisoners there. As  
02:10:37 6 much as we can, we try to limit that simply because the  
02:10:40 7 medical situation there is not good for us and the  
02:10:43 8 transportation issues that arise out of that situation  
02:10:47 9 with Wake County.

02:10:48 10 THE COURT: What's the medical issue  
02:10:49 11 problem?

02:10:52 12 MARSHAL PETTIT: A lack of staff on the part  
02:10:54 13 of the county and on the part of the Marshal's Service,  
02:10:56 14 Your Honor. So if someone falls ill, it is very  
02:11:00 15 difficult for us to staff the hospital detail, and the  
02:11:02 16 county doesn't have enough personnel to man that for us.  
02:11:05 17 And the Marshal's Service obviously doesn't have enough  
02:11:08 18 to put in 24 hours.

02:11:09 19 THE COURT: What county works around your  
02:11:11 20 issues? Because that would be an issue in every county  
02:11:16 21 if you don't have enough Marshal staff.

02:11:21 22 MARSHAL PETTIT: We have several contracts  
02:11:24 23 with different county jails where they provide that  
02:11:27 24 hospital service. Wake County has not been able to do  
02:11:30 25 that for us. My concern is putting him into Wake County

02:11:34 1 could cause a problem for us, for everyone.

02:11:37 2 THE COURT: Well, I'm not a doctor, but I  
02:11:38 3 certainly don't see those concerns etched as much as  
02:11:44 4 you've heard defense counsel say today. So you all, I'm  
02:11:50 5 sure, have people who can look at these records in this  
02:11:52 6 case. It's under seal, but I would make it available to  
02:11:57 7 you if you wanted your representative to review defense  
02:12:02 8 Exhibit 10. But as I looked through it, I didn't see  
02:12:06 9 anything that couldn't be addressed in the normal  
02:12:09 10 course. So I'll involve you talking to defense counsel,  
02:12:16 11 and if you are able to accommodate for the reasons that  
02:12:20 12 he has asked, that would be appreciated by the Court. I  
02:12:25 13 don't anticipate seeing a need for any transfer of him  
02:12:31 14 to New Bern until arraignment, unless something unusual  
02:12:37 15 comes up. So if that assists you in knowing my  
02:12:41 16 thoughts, I think that's -- now, something could happen.  
02:12:46 17 You have motions that you can file. But --

02:12:51 18 MR. McLOUGHLIN: We're happy to work with  
02:12:52 19 the Marshal's Service and the Government, Your Honor.  
02:12:54 20 And we'll try to figure it out.

02:12:56 21 THE COURT: Well, ultimately it is up to the  
02:12:59 22 Marshal's Service. All I can do is recommend. And I've  
02:13:02 23 been heard on that, and I just appreciate anything the  
02:13:05 24 service can do. Thank you.

02:13:08 25 MARSHAL PETTIT: I appreciate it.

02:13:10 1 THE COURT: Unless there's anything further,  
02:13:12 2 I have another matter to take up. Is there anything  
02:13:16 3 further in this case?

02:13:17 4 MR. KELLHOFER: Not from the Government, Your  
02:13:20 5 Honor.

02:13:20 6 THE COURT: Thank you very much, counsel.

02:13:33 7 Oh, counsel, your D-9 needs to be sealed at  
02:13:38 8 least in part because of who is named, based on the  
02:13:44 9 initials that I understand to be attributed to the  
02:13:48 10 alleged victim. I believe your D-9 reveals that  
02:13:53 11 person's name; is that correct?

02:13:56 12 MR. McLOUGHLIN: It probably does, Your  
02:13:58 13 Honor.

02:13:58 14 THE COURT: I am sealing D-9 and giving you  
02:14:01 15 14 days to submit to the clerk a redacted copy --

02:14:08 16 MR. McLOUGHLIN: Certainly, Your Honor.

02:14:09 17 THE COURT: -- having passed it by the  
02:14:11 18 Government. And send it with a letter indicating the  
02:14:14 19 Government's approval. And then we'll make that  
02:14:18 20 available in the public record. There's no need for you  
02:14:21 21 to move to seal D-10 because of the medical record  
02:14:25 22 issue.

02:14:27 23 And then the Government, you know I'm giving  
02:14:29 24 you 14 days to show me good cause.

02:14:32 25 MR. KELLHOFER: Yes, Your Honor.

02:14:32 1 THE COURT: Anybody have any questions about  
02:14:34 2 that piece?

02:14:35 3 MR. KELLHOFER: No, ma'am.

02:14:35 4 THE COURT: That will also be mentioned in  
02:14:37 5 that short order that I'm going to enter.

02:14:41 6 Thank you very much.

02:14:47 7 (Concluded at 12:16 p.m.)

8 - - -

9

10 C E R T I F I C A T E

11

12 I certify that the foregoing is a correct transcript  
13 from the record of proceedings in the above-entitled  
14 matter.

15

16 /s/ Tracy L. McGurk\_\_\_\_\_

\_\_\_1/23/2019\_\_\_

17 Tracy L. McGurk, RMR, CRR

Date

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